Justice 2 Committee

16th Report, 2006 (Session 2)

Stage 1 Report on the Custodial Sentences and Weapons (Scotland) Bill

Volume 2: Evidence

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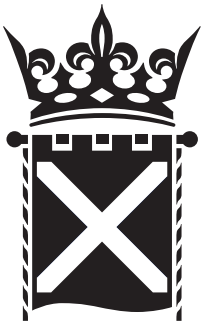

The Scottish Parliament

Justice 2 Committee

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Volume 2: Evidence

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CONTENTS

ANNEX D – ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

26th Meeting, 2006 (Session 2) 24 October 2006

Justice 2 Committee Official Report 24 October 2006

Supplementary written evidence
Letter from Scottish Executive Justice Department, 30 November 2006

29th Meeting, 2006 (Session 2) 7 November 2006

Written evidence
Convention of Scottish Local Authorities and Association of Directors of Social Work
Association of Chief Police Officers in Scotland
Association of Scottish Police Superintendents
Violence Reduction Unit, Strathclyde Police
Prison Officers Association

Justice 2 Committee Official Report 7 November 2006

Supplementary written evidence
Convention of Scottish Local Authorities and Association of Directors of Social Work

30th Meeting, 2006 (Session 2) 14 November 2006

Written evidence
- Victim Support Scotland
- Scottish Consortium on Crime and Criminal Justice
- Cyrus Tata, Co-Director, Centre for Sentencing Research, Law Department, Strathclyde University

Justice 2 Committee Official Report 14 November 2006

Supplementary written evidence
- Safeguarding Communities-Reducing Offending (SACRO)
- Cyrus Tata, Co-Director, Centre for Sentencing Research, Law Department, Strathclyde University

32nd Meeting, 2006 (Session 2) 21 November 2006

Written evidence
- Scottish Retail Consortium
- Parole Board for Scotland
- Risk Management Authority

Justice 2 Committee Official Report 21 November 2006

Supplementary written evidence
- Parole Board for Scotland

33rd Meeting, 2006 (Session 2) 28 November 2006

Written evidence
- Lothian and Borders Community Justice Authority
- Letter from Scottish Executive on part 3 of the Bill, 27 November 2006

Justice 2 Committee Official Report 28 November 2006

Supplementary written evidence
- HMP Cornton Vale
- HMP Barlinnie
- Letter from Deputy Minister for Justice, 6 December 2006
- Letter from Scottish Executive Justice Department, 15 December 2006

ANNEX E – OTHER WRITTEN EVIDENCE

Aberdeen Swordsmanship Group

AllstarUhlmann UK

Professor Sheila Bird

British Association for Shooting and Fishing

British Kendo Association

Bujinkan Brian Dojo (Scotland)

Mr Rennie Cameron

Mr John Campbell

Andrew Coyle, Professor of Prison Studies, King's College London

Crown Office and Procurator Fiscal Service

Mr Robert Edminson

Faculty of Advocates Criminal Bar Association

Mr Charlie Gordon MSP

Gun Trade Association

Roger Houchin, Centre for the Study of Violence, Glasgow Caledonian University, 13 December 2006

Law Society of Scotland

Mr Paul Macdonald (Petition)

Muzzle Loaders' Association of Great Britain

National Association of Re-enactment Societies

Mr David Neilson

Northern To-Ken Society

Mr James Reilly

Sheriff Fiona Reith QC

Scottish Fencing Limited

Scottish Police Authorities Conveners Forum

Sheriffs' Association

Sportscotland

Traditional Martial Arts and Budo Kai Institute

Whitby & Co

14:52

On resuming—

Custodial Sentences and Weapons (Scotland) Bill: Stage 1

The Convener: Item 3 is the Custodial Sentences and Weapons (Scotland) Bill. Members should have the bill and accompanying documents together with the two Scottish Parliament information centre briefings on the bill.

I welcome the Scottish Executive officials who have joined us. We allocated an hour for this agenda item—we will still have an hour, despite the fire alarm. Different officials are working on different elements of the bill. First, there will be a short presentation on the custodial sentences element, followed by questions. After that, the officials will swap over and we will follow the same format for the weapons element of the bill.

I welcome Jane Richardson, Rachel Gwyon, Annette Sharp, Brian Cole and Charles Garland, who I think are all from the Scottish Executive Justice Department. I invite Jane Richardson to give her presentation.

Jane Richardson (Scottish Executive Justice Department): As you can see, there are quite a few of us here. Given that the custodial sentences element of the bill is about the management of sentences from beginning to end, we thought that it would be helpful to the committee if we were all represented. Rachel Gwyon is from the Scottish Prison Service; Brian Cole is from the Justice Department's community justice services division; Annette Sharp and I deal with the parole aspects and general planning of the custodial sentences element of the bill; and Charles Garland is our legal adviser.

I will give a brief presentation to set the context, touching briefly on the background to where we are and giving an overview of the main measures in the bill. I will try to explain and put in context how the plans are intended to fit with the measures that are already in operation and working.

In early 2005, Scottish ministers gave a commitment to end the arrangements for the early release of offenders, which are set out in the Prisoners and Criminal Proceedings (Scotland) Act 1993. Ministers stated clearly that they wanted arrangements that allowed a structured management approach to sentences so that the risks presented by offenders, and offenders' needs, could be catered for more appropriately and more proportionately. Ministers also wanted the effects of sentences to be clearer so that the public, victims and offenders could understand them from when they were imposed.

Scottish ministers asked the Sentencing Commission for Scotland to examine early release and supervision of offenders as one of its early tasks, and it proceeded to do that. It consulted in June 2005 and produced its report in January 2006. The report set out a series of recommendations, but the underlying findings were that any new measures should contribute to promoting public confidence in the criminal justice system and provide clear statutory provisions that are easily understood by all. They should enable offenders to be punished proportionately, but they should also promote, as far as possible, the rehabilitation and resettlement of offenders. The commission also recommended that any new measures should improve public protection and, perhaps aspirationally, that they should deter would-be offenders.

Scottish ministers welcomed the report and said that they would consider those important core objectives when they planned the new measures. The plans were published on 20 June in the publication "Release and Post Custody Management of Offenders".

I will outline the key measures in the bill that are designed to manage the sentences of all offenders. It is important to stress that the measures are about sentence management. They will come into play when the judge has decided on the appropriate disposal—custody—and the length of the sentence. In other words, the measures will not change the courts' sentencing powers. The measures deal with life-sentence prisoners and those who are given a determinate custody sentence by the courts. The life-sentence measures in the 1993 act will not change, but for ease we are re-enacting all the measures in one bill.

The key feature of the provisions is that all offenders will be under some form of restriction for the entire period of the sentence. Sentences of 15 days or more will be subject to a combination of custody and community parts. The community part will be on licence and will often include supervision. One objective is to make sure that there is a clearer split between punishment and risk. The provisions allow the court to set what might be described as a punishment part, which is called a "custody part" in the bill. That will be a minimum of half the sentence but it can increase to three quarters. The bill explains the circumstances in which the court might find it appropriate to increase the custody part to three quarters of the sentence.

The effect of the sentence will be explained in court when the sentence is imposed. When the custody part is set, a risk test will be applied throughout the stages of the sentencing process. The risk test is explained in the bill as being concerned with the

"likelihood of offenders causing serious harm to members of the public".

During the custody part, the risk presented by the offender will be assessed using up-to-date sentence management information. There will be input from the relevant bodies that are responsible for managing the offender both while the offender is in custody and when they proceed to the community part of the sentence. Joint working is therefore a key feature of the proposals and there is explicit provision in the bill for joint working arrangements between Scottish ministers—in practice, the Scottish Prison Service—and local authorities. The idea is to enable risk assessment and risk management processes to be set up and to continue throughout the sentence.

15:00

The outcomes of the risk assessment while the offender is in custody will determine whether consideration should be given to keeping them in custody beyond the period imposed by the court on the ground of risk. The Parole Board for Scotland will still be the body responsible for finally deciding whether the individual poses an unacceptable risk. Offenders so assessed will be referred to the Parole Board so that it can take that decision. If the Parole Board concludes that the risk test has been met, it will direct Scottish ministers to keep the offender in custody for up to a maximum of three quarters of the total sentence. Depending on the length of the sentence, the bill allows for a continuous review process by the Parole Board in the event that the risk posed by the offender reduces during the work done with them while they are in custody. That will be considered by the board with a view to moving the individual to the community part of the sentence.

Once the offender has completed the custody part of the sentence, they will move to the community part and spend the rest of the sentence on licence in the community. Conditions will be attached to the licence that will be proportionate to the risk presented by the offender and the offender's needs. Again, the aim is to try to ensure better reintegration into the community, enhance public protection and reduce reoffending. The conditions will include mandatory supervision for a number of offenders, but that does not prevent supervision from being made available to any offender in appropriate circumstances. The offender will remain on licence for the duration of the sentence, but, with public protection in mind, will be subject to recall to custody for a serious breach of any of the licence conditions.

To help the committee to put the new provisions in context, Scottish ministers have said that they should not be viewed as standalone provisions; they will build on provisions already in place and structures that have already been set up, primarily under the Management of Offenders etc (Scotland) Act 2005. The community justice authorities established under the 2005 act will play a significant role at the local level.

An important aspect of the planning for the new arrangements will be the Prison Service's integrated case management system, which will be an essential part of the new support framework that will allow appropriate work to be done with the offender in custody with a view to their benefiting from that work and to moving it into the community.

Work is in hand to construct an appropriate operational framework for the new measures to build on the integration work started under the 2005 act. We have set up a planning group made up of all the various interests—the key organisations—involved in delivering that part of the criminal justice system. We hope that, by doing that, we will be able better to target available resources and to channel them in a way that enhances public protection, benefits the offender and assists in reducing reoffending.

The Convener: Thank you. That was very helpful, particularly your clarity about the process of handling the chain of measures, if I may put it that way.

To help with the management of the meeting, I suggest that the committee divide its questions into two sections. We will ask questions that are relevant to the officials who are before us; we will then invite the other panel of officials to give a presentation and answer questions.

What are the resource implications of the demands that the bill will place on the Parole Board? What preparatory work is being done to ensure that the Parole Board can meet those demands?

Jane Richardson: We acknowledge that a significant burden will be placed on the Parole Board, which, along with the whole system, will have a period of dual running while the current arrangements are phased out and the new arrangements are phased in. We have already started planning for that. The Parole Board participates fully in the planning group that I mentioned. The appropriate resources and structure will have to be in place before the Parole Board takes on the new functions.

The Convener: Several other issues arise. It would be helpful for the committee to have details about the changing rules of engagement for the Parole Board. We note the move from three-member tribunals to two-member tribunals. If the two members fail to come to an agreement, another loop will obviously have to be brought into play. Will you give a little more detail on the

reasons behind that change and how effective you think that it will be? What will happen if the two members of a tribunal cannot reach a unanimous decision?

Jane Richardson: I will answer the practical part of the question and my colleague Charles Garland may want to confirm the thinking on the legal aspects. We have had discussions with the Parole Board on that. The Scottish ministers obviously want to ensure that the board is fit for purpose, which means ensuring that sufficient resources and the appropriate operational framework are in place before the new arrangements are introduced. We want to ensure that the board is as efficient and effective as possible. In coming to the conclusion that a two-member panel—always with one legally qualified member—is appropriate, our view was that such a practice is operational in England and Wales and seems to work effectively. In consultation with the Parole Board, we decided that the practice may be appropriate for Scotland.

To summarise the decision about what will happen if the two members cannot agree and there is no unanimous decision, the view is that the individual will not be released.

Charles Garland (Scottish Executive Legal and Parliamentary Services): That is my understanding, too. As Jane Richardson explained, the intention is to create under section 2 new Parole Board rules that will set out the ways in which the board will consider cases for release. The intention is to draft those rules as the bill is in progress, as they are an important aspect of the measures and will need to be in place when the legislation is commenced. With existing cases, the intention is that, broadly, those will continue to be dealt with under the Parole Board rules as they stand now.

The Convener: Forgive me for being simplistic, but I am not a lawyer and I have not been involved in the Parole Board system. You seem to be saying that, if the tribunal is not satisfied that there are grounds for release—which includes cases in which one member is satisfied but the other is not, so there is no unanimous decision—release will not be granted. The fixed situation is that nobody will be released until a tribunal agrees unanimously that release is suitable for the individual.

Jane Richardson: Under the framework for release, individuals will always be released on licence at the 75 per cent point of the sentence. The Parole Board will have the power to direct the Scottish ministers to keep an individual in prison until that point of the sentence, after which they will be released on licence. If an individual is detained until the 75 per cent point, a fairly robust framework of licence conditions will be put in place to support the individual during the period of the sentence that they spend in the community, which will include appropriate measures for public protection.

The Convener: Thank you for that clarity.

Did anything go wrong with the three-member tribunal? Was there a particular reason for the change, or was it simply a question of efficiency and the fact that the new system has worked elsewhere?

Jane Richardson: It was a question of efficiency and effectiveness elsewhere. We looked to other models for some assistance.

Mr Stewart Maxwell (West of Scotland) (SNP): I want briefly to follow your questions, convener.

Having read the bill, I came to the conclusion, which has just been confirmed, that somebody would be released after 75 per cent of the sentence. A Scottish Parliament information centre briefing on the custodial sentences part of the bill says on page 18:

> "Offenders who present as a high risk of re-offending and/or who pose an unacceptable threat to public safety will be referred to the Parole Board by the Scottish Ministers with a recommendation that the custody part of the offender's sentence should be extended beyond the minimum term set down by the court at time of sentence"—

in other words, towards 75 per cent of the sentence.

Jane Richardson: The minimum referred to in that briefing is the 50 per cent minimum, which—I say this without pre-empting any sentencing decisions by courts—may be seen as the norm for the punishment part.

Mr Maxwell: I accept that, but the question is whether offenders who present as a high risk of reoffending and/or who pose an unacceptable threat to public safety will be released after 75 per cent of their sentence.

Jane Richardson: Yes.

Mr Maxwell: Why?

Jane Richardson: Good question. Ministers have considered the point, and the debate has run for a considerable time. As the committee may have noticed, there is a slight departure from the Sentencing Commission's recommendations. The issue is whether an individual is either kept in custody for the full period of the sentence—obviously, that is the ultimate way of protecting the public—or kept under supervision in the community for a period of the sentence. In other words, the question is whether the sentence ends, the prison doors open and the individual walks away, or the work done in the prison setting is taken forward to the community part of the sentence.

There is also an issue of incentive for the offender to work with the authorities to address their risks and needs. If the individual knows that the sentence will be whatever the court imposes, with no incentive to get conditional liberty in the community, it is difficult to motivate them. My colleague from the Scottish Prison Service might want to say more about that.

Mr Maxwell: I accept everything that you say. I support alternatives to custody and I think that the idea of an incentive is great. However, do you think that it is reasonable to release an individual who completes 75 per cent of the sentence but has been assessed and identified all the way through as presenting a high risk of reoffending and/or posing an unacceptable risk to public safety? Twenty-five per cent of their sentence, which could be in custody, still remains. I accept the other points, but I am curious why a line in the sand has been drawn at 75 per cent, with no flexibility to keep someone in custody for 100 per cent of the sentence.

Jane Richardson: As I said, after thinking through the options, the Scottish ministers have decided that it would be appropriate to deal with offenders by managing them both in custody and in community settings in all circumstances.

Mr Maxwell: I still do not understand why. You say that the Scottish ministers have decided that, but why?

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): You need to ask the ministers.

Mr Maxwell: This is the bill team. I am sure that they have some knowledge of what has been going on in the Executive.

Jane Richardson: I am sorry—I might not be making myself very clear. The policy is that the individual, even when they are high risk, should be managed in the community rather than disappearing at the end of the sentence. As I mentioned, they would be subject to a full package of measures, including restrictive conditions if necessary. The licence conditions would be made clear to the individual, and if they breached the conditions—or any one of them—seriously, the Scottish ministers could recall the individual to custody for the full period of the sentence.

It is a balancing act between providing an incentive for people to do something while they are in custody to address their offending behaviour and not reoffend when they are in the community, and just locking up an individual for the full period with no prospect of release. It would prove quite difficult for the prison service and the local authorities to work with such an individual and better manage their risk.

15:15

The Convener: In fairness to the officials who are here today, the committee is taking evidence from several agencies and the minister, and I am sure that we will take that issue further.

Cathie Craigie: It seems to me that if someone comes before the board after 50 per cent of their sentence is served, there is not really much incentive to change their behaviour and come back when 75 per cent of their sentence is served. There is not much of an incentive to redress the imbalance. What consultation responses did you get to that particular part of the bill? What did members of the Parole Board, the public and other interested parties say?

Jane Richardson: First, the bill sets out provisions for a continuous review of the individual's detention and custody beyond the minimum period imposed by the court. Of course, that would depend on the length of the sentence. However, the broad rule of thumb is that individuals who are given a fairly lengthy sentence could be seen as more risky, if I can describe it like that. Individual offenders will be assessed throughout the period of their custody. If the risk assessment test shows them to be high risk, they will be referred to the board, but that referral will not be automatic; it will be only for those who are assessed as high risk. If the board agrees with the Scottish ministers' recommendation and directs that the individual is not released at that point, then depending on the time they have left to serve—and if it is a long sentence, 50 per cent or 75 per cent of it could be a quite considerable time—the offender will be referred back to the board. The board might therefore direct the individual's release before the 75 per cent point in the sentence if the individual has been working to address their offending behaviour or particular needs. I think that that answers your question about how an incentive is provided.

Cathie Craigie: Okay. So what were the responses to the consultation?

Jane Richardson: The consultation on the measures was done through the Sentencing Commission for Scotland's work. The Scottish ministers then took the recommendations of the Sentencing Commission and published the white paper containing the plans in June. That was the publication of the plans; it was not the consultation. Although it would have been welcome, we did not receive much in the way of comment on the plans. What we did receive was broadly favourable, but more general than the specific issues about which you have asked.

Colin Fox: A very general question leaps out at me when I read the bill and explanatory notes. Will the commitment of the Scottish Executive Justice

Department and this Parliament to reducing the overall numbers of people in prison be compromised by the measures in the bill that seek to put people in jail and make them stay there, so that more people will be in jail for longer? What consideration have you given to the impact that this bill might have on that commitment?

Rachel Gwyon (Scottish Prison Service): The Scottish Prison Service has considered the proposals and the objectives to improve clarity of sentencing and integrated management. We have also had to model the impact of the proposals. In the financial memorandum is a collection of numbers where we have tried to set out assumptions of the percentage of people who might trigger assessment beyond the 50 per cent point in their sentence, and the assumptions that we have had to make in estimating how many people might breach their conditions of release and be recalled. I am happy to talk members through those figures subsequently, if they would like. The measures in the bill will have quite a sizeable impact on the daily prison population, because a proportion of the people who have been given sentences will stay with us longer. The financial memorandum looks complicated because different paragraphs refer to different numbers. I have a chart that may help.

The Convener: We would be grateful if after the meeting all of you, including your colleagues on the other panel, would review the questions that have been asked. If you believe that it is appropriate for you to send short notes to the committee to clarify some points, that will be helpful. You may take our queries away with you and send something back in. I am conscious of the time and members would like to raise a number of issues.

Colin Fox: I am grateful for your clarification and for the figures that you are able to send us. I do not have the financial memorandum to hand, but can you give us an estimate here and now?

Rachel Gwyon: In short, the proposals will add between 700 and 1,100 prisoners every day to the prison population.

Colin Fox: I look forward to seeing the chart later.

Maureen Macmillan (Highlands and Islands) (Lab): I want to follow up on the previous questions about release after 75 per cent of a sentence has been served. I understand the reason for that provision—you want offenders to be integrated into the community by the time that their sentences come to an end. However, I note that if the approach is not successful an offender can be recalled into custody, presumably for the rest of his or her sentence, so it is possible for an offender to be in custody for more or less 100 per cent of his or her sentence. In that situation, how will the offender be integrated into the community? Is it proposed that there should be some kind of integration after 100 per cent of the sentence has been served?

Brian Cole (Scottish Executive Justice Department): Because it is essentially a determinate sentence, there will be no statutory requirements after 100 per cent of the sentence has been served. We anticipate that local authorities will offer voluntary assistance to offenders in that situation, but there will be no statutory hold over such offenders. Anyone who is currently released from a determinate sentence is eligible for voluntary assistance from local authority criminal justice social work. Individuals in the situation that we are discussing would qualify for such assistance.

Maureen Macmillan: Do you think that a voluntary arrangement with criminal justice social work is sufficient?

Brian Cole: Because it is a determinate sentence, there is no statutory requirement on the various agencies concerned after the sentence has been served. That is why we are requiring people to be released after they have served 75 per cent of their sentence, if they have not been released at an earlier stage.

Maureen Macmillan: However, it is possible for an offender to spend more or less 100 per cent of their sentence in prison, if they are recalled from the community because of their bad behaviour.

Brian Cole: Yes.

Jane Richardson: It is worth bearing it in mind that the court has the power to impose an extended sentence—in other words, an extended period of supervision can be retained. That only half-answers your question, because a determinate sentence will end at some stage. However, the judiciary has welcomed the fact that we have retained the power for the court to extend sentences for particularly risky offenders.

Maureen Macmillan: Will it be able to do that while the sentence is being served?

Jane Richardson: There will be a custodial period and then extended extension, if that makes sense, of sentences for up to 10 years for sexual and violent offences.

Brian Cole: That extension is imposed at the point of sentence.

Maureen Macmillan: How does the court get involved?

Jane Richardson: It is a sentence, so the court would—

Maureen Macmillan: I am trying to work out what will happen at the end of the sentence if almost 100 per cent of it has been served. How will we put in place an arrangement that provides for extended supervision of an offender after release? When an offender has used up their sentence, is there any way for the case to be referred back to the court?

Jane Richardson: No, as Brian Cole explained.

Maureen Macmillan: So it would fall to criminal justice social work, using whatever resources it had.

Jackie Baillie: Am I right in saying that ministers would not be able to set any licence conditions, because 100 per cent of the sentence had been served?

Jane Richardson: Yes.

Jackie Baillie: The exception being sex offenders, for whom ministers retain that right.

Jane Richardson: Sex offenders would be subject to registration, which is a slightly different arrangement. When a sentence of whatever length comes to an end, any conditions imposed during the period in the community on licence will also come to an end.

Maureen Macmillan: I want to explore a little further the workings of the Parole Board. Who will give evidence to the Parole Board when somebody comes up for parole? Where is the evidence gathered from?

Jane Richardson: I will explain the present arrangements and then explain how we think the new provisions will work. As my colleague said, we are presently drafting the rules.

At the moment, the law says that anyone who receives a determinate sentence of four years or more will have their case reviewed at the halfway point, to see whether they will be considered for parole. The case is referred to the Parole Board, which will consider it at a meeting and determine whether the individual will be released on licence.

If the individual received a life sentence, the review is carried out by a tribunal—a court-like body that will consider the risk posed by the individual and consider whether it would be appropriate to release them on life licence. Under the new arrangements, that is the system that we want to apply to all cases that are referred to the Parole Board.

Maureen Macmillan: Will having only two members on the Parole Board offer a wide enough range of experience?

Jane Richardson: Yes. We want the board to be fit for purpose, but we have to be aware of the legal and human rights requirements. We have therefore considered how things work elsewhere. There will always be a legal member.

Maureen Macmillan: Once the tribunal has made its decision, how will information be disseminated to victims? Will victims be able to give a statement to the tribunal?

Jane Richardson: The arrangements for victim representation will obviously continue, but they will be adapted to take account of the new circumstances. Any member of the public can make representations, and the victim notification scheme will continue.

Maureen Macmillan: And people with a need to know will be informed of the outcome.

Jane Richardson: Yes. Indeed, we are taking steps in the legislation to ensure that the Parole Board includes someone with experience of working with victims, or with experience of actually being a victim. We will enshrine that requirement in the legislation.

Maureen Macmillan: Such a person would be able to inform their colleagues, even if they did not sit on every tribunal.

Jane Richardson: Yes.

Cathie Craigie: There will be a significant increase in the number of cases going before the tribunal of the Parole Board. How will risks be assessed? What role will the new proposals give to the Risk Management Authority?

Jane Richardson: The bill contains the risk test, as it were, but obviously we have to build a structure below the risk test, to give a framework for assessing risk and for referring cases to the Parole Board. Earlier, I mentioned the planning group that has been set up to consider the diverse work streams that will have to be set in place before we can implement the new arrangements. The Risk Management Authority is involved in that work and will advise on the tools and the structure that will enable proper risk assessments.

My colleagues might want to say something about the work that local authorities and the prison service are doing on assessing risk.

15:30

Brian Cole: The risk assessment process will involve a joint approach by the SPS and local authorities. However, the SPS, acting on the Scottish ministers' behalf, will make the final decision on whether to refer a case to the Parole Board. The joint approach will use the tools that the RMA recommends.

Cathie Craigie: Who will make up the Risk Management Authority?

Jane Richardson: It already exists.

Cathie Craigie: Yes, but who makes up the RMA?

Jane Richardson: It is a non-departmental public body that has a board that comprises a number of public appointments from various disciplines. It is supported by a management structure and operates under a clear, three-pronged remit that was set out in the Criminal Justice (Scotland) Act 2003 to provide, broadly speaking, a centre of excellence for risk assessment and risk management.

Cathie Craigie: The offender's response in custody will be an important part of the risk assessment process. Are you confident that offenders will have access to appropriate rehabilitation opportunities?

Rachel Gwyon: A lot will depend on the length of the sentence. Somebody who qualifies for the combined sentence with a 16-day sentence will need to be inducted into prison, be risk assessed and go to a tribunal by day 8. It is not as feasible to do as much programme work with somebody in that period of time as it is if their sentence is four years. On a four-year sentence, the assessment of whether the offender represented a risk of harm would be made at the two-year point.

We will develop our integrated case management system, which started earlier this year and aims to get much better information from a range of sources, including risk assessment, psychological assessment, social work input, drug and rehabilitation input and all the work that we already do on offender outcomes, such as housing, employment, family relationships, health and drug work. In preparation for the bill's implementation, we have started to work with other agencies, such as the Parole Board and the Risk Management Authority, on an appropriate risk assessment tool for risk of harm. We had to use a proxy measure for our estimates for the bill and we are working with those agencies on what the actual risk assessment tool will look like.

Cathie Craigie: Have the resource implications for the organisations that are responsible for rehabilitation and throughcare been considered? Can you cope?

Rachel Gwyon: Yes. We have included in the financial memorandum the costs for the extension of the integrated case management system, which will need to go from applying to about 3,000 prisoners to applying to between 9,000 and 12,000 every year. It will cost us between £5 million and £6 million per annum for the extra staffing to roll out that increased service. I ask Brian Cole to respond on throughcare.

Brian Cole: We have done similar calculations for the bill's impact on criminal justice social work services and related agencies for offenders who are released on licence. Our current estimate for the cost of supervision in the community plus the contribution to the risk assessment process, which is in the financial memorandum, is somewhere in the region of £7.95 million.

Colin Fox: I will focus on the community part of sentences. The explanatory notes to the bill talk about the different levels of supervision that an offender may expect when serving their sentence in the community, such as the licence restrictions and the intervention that they could anticipate. Will you elaborate on what that intervention will mean in practice and who will carry out the supervision?

Brian Cole: In the bill, we propose a cut-off point of six months for supervision intervention to kick in. It is recognised that those who are serving sentences of six months or less—and of course 15 days and more—will be subject to licence, but given the short duration of the sentence, the maximum period will be no more than three months. Professional opinion suggests that not a great deal can be done in terms of supervision for a period as short as three months or less. For those serving more than six months, we anticipate that supervision will be undertaken by local authority criminal justice social workers. The intensity of the supervision will be informed by the risk assessment undertaken during the course of the sentence. For those who present a higher risk, the level of supervision will be more intensive. That supervision will not just involve the work done by local authority social workers; it is the extent to which people can be plugged into services, for example treatment services for those with a drug problem.

Colin Fox: What does that supervision entail, for example for somebody who has been sentenced to a year, who has done half in custody and who has another six months under licence or restriction? What is the nature of the programmes in which they would be involved with criminal justice social workers?

Brian Cole: Again, it depends on the nature of the offence for which they were convicted. It will be a combination of reporting requirements to the supervising officer—in certain instances, the supervising officer will be undertaking home visits to the offender—and consideration of the circumstances of the offender, for example the extent to which they may need to undertake other work. It could be work in relation to their offending behaviour; for example, we are at the early stages of rolling out an accredited general offending programme. It would be a 26-week programme, in which various aspects of the offending behaviour would be considered with the offender. It could be plugging into Alcoholics Anonymous groups or it could be treatment services and so on. Basically, it will be informed by the risk assessment.

Colin Fox: At the other end of the scale, so to speak, the bill proposes that those offenders who are sentenced to fewer than 15 days will spend their entire sentence in custody. What consideration has been given to the impact on those offenders, considering that early release is to do with managing them in prison and encouraging them not to reoffend? Has there been any examination of the impact of the fact that that has been taken away and that those offenders will face the whole 15 days in custody?

Jane Richardson: It is fair to say that the number of individuals who get a sentence of fewer than 15 days is small. They tend to be fine defaulters, who have gone through all the alternatives available to the court, such as helping the individual to pay the fine or giving them a supervised attendance order. My colleague will correct me if I have gone off script here—

Colin Fox: We like it when you go off script.

Brian Cole: Supervised attendance orders in respect of fine defaulters have been available nationally since 1998. They offer an alternative to courts to the custody approach. We are piloting provisions in Glasgow district court and Ayr sheriff court whereby those prescribed courts which would otherwise have the option of custody for those who are fine defaulting on less than £500, do not have the ability to sentence such fine defaulters to custody and have a mandatory requirement to make use of SAOs. That does not mean to say that those fine defaulters may not ultimately end up in custody; for example, if they have breached the SAO, the court, in dealing with that breach, may decide on custody. However, certainly at the first cut, it avoids custody for those fine defaulters.

Colin Fox: It is curious that someone who has been sentenced to 14 days will serve 14 days but that someone who has been sentenced to 21 days will serve 10 or 11 days. If a judge ever sentences me to 14 days, I must remember to ask him for an extra week.

The Convener: I do not think that Mr Fox is seeking legal representation at this stage.

Jackie Baillie: I want to ask specifically whether you have carried out any gender analysis of the proposal, as I am genuinely worried about the disproportionate impact that we know there is on women and their families when women default on fines. Have you considered that? Have you done any research into how often supervised attendance orders are used and in what context? I think that the proposal will have unintended consequences.

Brian Cole: We have not conducted research in the context of the bill, but we have examined carefully the role and position of supervised attendance orders. In addition to the pilot schemes in Glasgow district court and in Ayr sheriff court, we are running separate pilot schemes in Dumbarton and Paisley, which provide the courts with the option of using supervised attendance orders as a disposal of first instance. That is to say, when one of those courts is disposed to impose a fine but believes that the offender does not have the means to pay, the court has the option of imposing a supervised attendance order in the first instance instead of imposing a fine and going through the business of the person defaulting.

Both sets of pilot schemes are well under way, and ministers will want to think carefully about the impact of those schemes in addressing the issues in relation to women offenders who find themselves defaulting on fines. One of the considerations in selecting Glasgow district court for the pilot scheme was the large number of women fine defaulters who were appearing before that court and then finding themselves in Cornton Vale.

Jackie Baillie: I take it that, although there is work in progress, no specific gender analysis of the proposal has been carried out.

Brian Cole: That is correct.

Rachel Gwyon: When we gave evidence on the Criminal Proceedings etc (Reform) (Scotland) Bill about the fine enforcement officers that are being introduced, the Justice 1 Committee asked us the same question. I sent a written response a few months ago, which we can dig out. We found that having fine enforcement officers was likely to have a beneficial impact on the number of women who are with us each day, but that at a couple per year the figure was not large enough to be statistically significant. I do not know whether that helps. We would be happy to make that answer available in writing as well.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I have two brief questions. The first is of a more general nature. Paragraph 163 of the explanatory notes to the bill states:

> "For supervision to have any meaningful impact existing social work practice experience suggests that a minimum supervision period of 3 months in the community is essential."

However, the preceding paragraph states clearly that more than 50 per cent of those who serve sentences are sentenced to less than six months; therefore, the licence period is between eight days and three months. The bill will place Scotland third behind Russia and America in respect of the proportion of the country's population that is in prison, and it will make our prison population by far the biggest in the European Union, yet if we are to believe what paragraph 163 says about the

conditions to ensure a meaningful impact, the bill will have no impact on rehabilitation for more than half the prison population.

Brian Cole: Yes. Paragraph 163 refers to a minimum period of three months' supervision for it to have any effective impact. Those who serve sentences of six months or less will, of course, still be subject to licence, and the licence will be fairly minimal, stating that they shall be of good behaviour. That is not to say that such individuals may not be plugged into services if that is achievable, but they will not be subject to the supervision requirements that apply to those who serve sentences of more than six months.

15:45

Jeremy Purvis: So it is fair to say that there will be no meaningful impact for more than 50 per cent of the record prison population—which, with the bill, will top 9,000.

Brian Cole: As I said, attempts will be made to get those who are serving sentences of less than six months into services. The issue is the extent to which supervision, as offered by local authority criminal justice social work departments, will be possible and effective during that period.

Jeremy Purvis: The bill states that Scottish ministers—I understand that, in practice, it will be the Scottish Prison Service—and local authorities must establish arrangements for the assessment of prisoners. That will apply whether or not the inmate comes from the local authority area or intends to go to there. They might not indicate that they intend to go there, but that is a matter to be discussed further down the line; the local authority must be involved in the assessment. However, the financial memorandum does not seem to mention the costs of local authorities taking part in that. It seems to mention only SPS costs.

Rachel Gwyon: An extra £500,000 per year will be added for the social work input to increased integrated case management. The cost is currently £5 million to £6 million, so the new total will be £5.5 million to £6.5 million. That is covered in paragraph 158 of the financial memorandum.

Jeremy Purvis: So that is included. It looked as if the Scottish Prison Service was saying that its additional costs would be £5 million to £6 million, but the bill says that the risk assessment is joint and the cost to local authorities will be about a tenth of that. I thought that the split would probably be 50:50, but perhaps you can come back to us with a bit more detail.

The Convener: Perhaps the panel could send us a note on that.

Jeremy Purvis: On the non-recurring capital costs, the financial memorandum mentions "the new prison/s". Can we have a bit more detail on the forecast? Obviously, we are talking about a new prison, but the phrase "the new prison/s" is slightly broader. Surely there must be a bit more detail on how many more prisons we will need in Scotland to lock up our record number of people.

Rachel Gwyon: At the moment, we have an assessment of the number of additional prisoners per night whom we expect to be in our care as a result of the measures in the bill. In addition, the projections are increasing in any case. Some 700 to 1,100 additional prisoner places will be required, but that does not necessarily translate into the number of prisons. I am not trying to avoid your question, but there are different ways of providing accommodation. Sometimes it comes in chunks of a few hundred places in house blocks.

As a rough rule of thumb, when we are considering the number of whole prisons, we tend to say that 700 places is equivalent to approximately one prison. That would cost about £100 million if it was built in the public sector. We have given the capital reversion rates that would apply if it was built in the private sector. However, the figure of 700 to 1,100 places does not translate into a number of whole prisons. We have to examine the number of additional places and start working through how those people should be accommodated. That will have to be worked through further down the track.

Jeremy Purvis: So, at this stage, the financial memorandum can only be extremely broad.

Rachel Gwyon: It gives the most precise estimates that we can produce, given the number of underlying assumptions that we have to make.

The Convener: We will leave it there. As I said earlier, if anyone on the panel wishes to send us more information on the issues that arose today, they are welcome to do so. Similarly, if members have further questions, they can submit them to the clerk, who will write for further clarification on behalf of the committee.

I thank the panel. I am sorry that we were a little pressed for time—I want to ensure that we have time to hear from the next panel—but I thank you for coming along. The committee appreciates the offers that you made.

I welcome the lady and gentlemen from the Scottish Executive Justice Department: Andrea Summers, Gery McLaughlin and Paul Johnston. I invite Mr McLaughlin to make an opening statement.

Gery McLaughlin (Scottish Executive Justice Department): I am here to talk about part 3 of the bill, which deals with weapons and provides for restrictions on the sale and availability of swords and non-domestic knives. The objective of part 3

is to put in place safeguards to help to prevent such potentially dangerous weapons from falling into the wrong hands. The provisions form part of the Executive's reform of knife-crime law and are a vital component of the wider package of measures to tackle not only knife crime but violence more generally. I should emphasise that they are not the only component, although they are the only one that is dealt with in the bill.

The committee may be familiar with the background to the measures, but the stark facts on knife crime bear repeating. The homicide stats show that knives and other sharp items continue to be the most common method of killing in Scotland. In 2004-05, 72 of the 137 homicides were committed with knives. Those figures are comparably much higher than those in England and Wales and among other, international comparators.

On swords, the available data do not allow us to identify how common the use of such implements is, but swords are designed as deadly weapons and are likely to result in serious injury if so used. From police and hospital reports, it is clear that swords are being used to commit crimes and inflict injury. Advice from the police is that the use of swords is becoming more common.

On knives, the breakdown of data for Strathclyde shows that, in 2004-05, there were 1,301 knife attacks. Of those, 1,100 were in a public place and involved a non-domestic knife.

As the review of knife crime underlined, tackling knife crime is a priority for the Executive. The partnership agreement, in the section on supporting stronger, safer communities, makes a commitment that the Executive will

"review the law and enforcement on knife crimes."

The outcome of the review was announced in November 2004, when the First Minister presented a five-point plan on knife crime. Three of the five points were legislated for in the Police, Public Order and Criminal Justice (Scotland) Act 2006, which came into force at the start of last month. The act doubled the maximum sentence for carrying a knife in public or in a school from two to four years. It also removed limitations on police powers of arrest for those offences and increased the minimum age of those to whom non-domestic knives may be sold from 16 to 18.

The Custodial Sentences and Weapons (Scotland) Bill will implement the final two points of the five-point plan. The bill will ensure that the Scottish ministers have appropriate powers to ban the sale of swords, with exceptions, and to require businesses that sell swords and non-domestic knives to be licensed. The provisions in the bill were developed after consideration of the responses to "Tackling Knife Crime: A Consultation", on which I can give further details if the committee so wishes.

The first element of the weapons provisions in the bill is a general ban on the sale of swords. Section 141 of the Criminal Justice Act 1988 provides for a ban on offensive weapons generally. Section 45 of the bill will provide for the creation of exceptions to those offensive weapon provisions through a general method. Those exceptions could include some uses of swords. However, section 46 is more specific and will enhance ministers' existing powers by enabling them to introduce a ban on the sale of swords and to make the prohibition subject to specified defences. Those defences will be the use of swords for legitimate religious, cultural and sporting purposes.

As I said, the bill builds on the model of the ban on offensive weapons in section 141 of the 1988 act, but it will adapt the application to swords to allow for legitimate uses. Exceptions will be made for religious purposes, for cultural purposes, including Highland dancing, theatre, film, television, antique collecting, re-enactment and living history, and for sporting purposes, including fencing and martial arts activities that are organised on a recognised sporting basis. Exceptions will also be made for antique swords in line with the current provisions in firearms legislation. Finally, there will be an exception for other activities that are carried out with the authority of the Scottish ministers, after application to them. The aim is to deal with any exceptional cases that have not been provided for.

The bill also deals with the licensing of sellers of non-domestic knives and other items. The bill provides for the introduction of a new mandatory licensing scheme for the commercial sale of those items. The scheme will apply to people who carry out the business of dealing in those items. It will be a criminal offence for businesses to sell swords or non-domestic knives to members of the public without a licence. The framework on which the provisions build is the Civic Government (Scotland) Act 1982, which deals with licensing generally. Local authorities will act as licensing authorities for the knife licences, as they do for other licensing schemes. The bill will apply to those who run a business in Scotland, including those who sell over the internet.

The requirement for a licence will apply to the sale of swords, knives and knife blades other than those that are designed for domestic use, which is the same approach that was taken in the Police, Public Order and Criminal Justice (Scotland) Act 2006, which changed the age at which people can buy such items. Dealers that sell only domestic knives such as cutlery or do-it-yourself products will not need a licence. Also, auction houses that

sell items on behalf of others will not have to be licensed, unless they wish to sell such items on their own behalf. Businesses that sell exclusively to other businesses or professionals—sorry, professions—will not have to be licensed.

The requirement for a licence will not apply to those who are engaged only in private transactions and who are not involved in a business. A licence will not be required to sell small folding pocket knives, sgian dubhs or kirpans if the blade is no longer than 7.62cm or 3in. A licence will be required to sell any other articles that have a blade or a sharp point and those that are made or adapted to cause injury, such as arrows or crossbow bolts. As well as the requirement for a licence to sell such items, a licence will be required for businesses that hire, lend, give, offer or expose them for sale. The intention is to cover all the territory and close any loopholes.

The bill will provide powers, which ministers intend to use, to set strict licence conditions and to specify types of licence conditions that must be attached to all knife dealers' licences. That will leave open the possibility that the type of condition may be specified by ministers, while the details are set by individual local authorities. As is the case with other licensing schemes, local authorities will be able to determine the details of any conditions not specified by ministers and impose additional licence conditions suitable for their locality or appropriate for the individual business, should they see the need.

It will be a criminal offence for the licence holder to break the conditions of the licence. It will also be an offence for a person knowingly to provide false information to a seller in connection with the purchase of such items when the seller is required to collect the information as a condition of the licence.

The bill will confer powers on local authority trading standards officers and the police, upon attaining a warrant, to enter premises where unlicensed dealing in knives is suspected of taking place or where a dealer is suspected of breaching the conditions of their licence. The bill will allow articles to be seized in such searches, with the prospect of the dealer forfeiting any knives or swords seized or in stock should he or she be convicted of an offence.

16:00

The Convener: Thank you for that. I ask members to be as tight with their questioning as possible, and I will try to demonstrate how to do that.

One or two issues come out of what you said, including the need for a licence for retail sales of knives. As you said, retailers of knives that are designed for domestic use will not need a licence, but the bill does not appear to contain a definition to clarify the difference between a domestic and a non-domestic knife. You have mentioned one or two DIY products that are not domestic but have blades and could be modified simply. If there is no definition, how can a retailer know exactly where it stands on what it wishes to sell and whether it needs a licence?

Gery McLaughlin: Ultimately, the definition will be a matter for the courts, but the bill says that a licence will be needed except for knives that are designed for a domestic purpose. Cutlery and DIY products are clearly designed for a domestic purpose, but if retailers are in doubt, we could offer guidance. The same approach was taken in the Police, Public Order and Criminal Justice (Scotland) Act 2006, under which the age of sale was increased to 18 for such items other than domestic knives but remains at 16 for domestic knives so that young people or couples setting up house can still obtain DIY products or sets of cutlery.

The Convener: I am not aware that stores challenge someone who buys a bread knife, for example, but will that become an obligation?

Gery McLaughlin: If a retailer sells only bread knives, it will not need a licence. If it sells a wider range of products, it will be required to satisfy itself that they are only for domestic purposes, and if that is so, it will not need a licence. If the retailer is uncertain or thinks that the products are for purposes other than domestic, it will require a licence. Guidance will be issued through the licensing scheme, and as trading standards officers become experienced in the scheme, local authorities will no doubt be able to give retailers a view on whether they need to be licensed.

The Convener: It sounded from what you said a moment ago that the courts will define. That is usually a bit too late, as people will want to know in advance whether they need a licence. Is there any intention in the Scottish Executive Justice Department to define more clearly exactly what a domestic knife is? If you need to write to us on that question, that is fine, but I have seen blades from hunting knives that, with a different handle, would look exactly the same as those used in domestic situations—some butchery knives for example. Is there a move to have a clearer definition?

Gery McLaughlin: The definition that we are proposing and that Parliament will vote on is the one in the bill. We can provide guidance to supplement that definition, but the law will be the wording in the bill. Therefore, ultimately it will be a matter for the courts. However, it will be down to individuals to exercise common sense on whether something is for use around the home.

I do not know how many committee members were present at the recent demonstration on knife safety—I think that it was in this committee room.

The Convener: I was there.

Gery McLaughlin: There was a clear distinction between the domestic knives and the ones that were not designed for domestic purposes. It is that categorisation that we are attempting to capture in the legislation.

Maureen Macmillan: It was as a result of that demonstration that I wanted to ask you about screwdrivers. We were told that a large Phillips screwdriver was a favoured weapon. I note what you said about under-16s not being allowed to be sold domestic knives. Will that provision in any way prevent under-16s from being sold such screwdrivers?

Gery McLaughlin: The licensing scheme will cover knives, knife blades and any other sharp, pointed objects that are designed to injure people. It will not cover screwdrivers as such. I would take issue with some of the information that was provided in the demonstration. It gave the strong impression that a number of crimes are committed with normal domestic knives, screwdrivers and so on. As I have said, the statistics from Strathclyde on stabbing attacks show that of 1,300 incidents, 1,100 were in a public place and committed with a non-domestic knife. Of the other 200, I am not sure how many were committed in a domestic situation where we would expect it to be more likely that a domestic knife would be used. In the vast majority of cases, the problem is caused by the type of knives that we are seeking to regulate.

Maureen Macmillan: Thank you—that is helpful.

Mr Maxwell: You mentioned that a business selling to a business will be exempt and that a business selling to a profession—first, you used the word "professional" but changed it to "profession"—will be exempt. Will you clarify what you meant by a business selling to a profession?

Gery McLaughlin: The example I would give is a company selling medical knives—scalpels—to hospitals. Such a company will be exempt from the legislation; that will also be the case if the company is selling to individual surgeons who have a professional need for such knives. If, however, such a company were to make a habit of selling medical knives to the general public—to someone coming in off the street—it would require to be licensed. The objective of the legislation is to regulate when we feel we have to, but to try to avoid regulating when we think that there is no need. We consider that there is no need to regulate businesses selling to businesses or to professions who may have a use for such knives.

Mr Maxwell: I accept that, and I agree with you on the business-to-business aspect; I was just trying to clarify what you meant when you said "profession". You gave a good example. What if somebody was a butcher—would that be defined as a profession? Boning knives are a lethal weapon, but they are a legitimate part of a butcher's profession.

Gery McLaughlin: I shall ask one of my legal colleagues for their view on that.

You pointed out my change of wording from "professional" to "profession". I was trying to stick to the wording in the bill; in section 43, which inserts section 27A into the 1982 act, subsection (3) talks about

"persons not acting in the course of a business or profession".

Paul Johnston will deal with the question about butchers.

Paul Johnston (Scottish Executive Legal and Parliamentary Services): If a butcher was seeking to purchase a knife for use in their shop, they would be acting in the course of their business or profession, so the seller would not require a licence.

Mr Maxwell: So butcher-supplies companies would be exempt, even though any member of the public could walk in—

Paul Johnston: No. They would not be exempt if there was any prospect of them selling those butchers' knives to persons other than butchers. If they were possibly going to be selling them to private individuals, they would require a licence. They would have to be clear that they were selling knives only to persons who were acting in the course of their business or profession.

Mr Maxwell: So it would be their responsibility to identify whether the individual was a bona fide butcher.

Paul Johnston: Yes.

Gery McLaughlin: It is more a question of businesses that operate as suppliers to the trade not needing a licence. Businesses that do that but which also open their doors to the general public—or advertise to the general public—will require a licence.

Mr Maxwell: Perhaps I misheard you, but you said that sports would be exempt. Is that correct?

Gery McLaughlin: Exemptions would be made for sporting purposes.

Mr Maxwell: Would that include fishing knives?

Gery McLaughlin: No. I referred specifically to fencing and martial arts organised on a normal basis.

Mr Maxwell: I know that you specifically said that, but most of us would define fishing as a leisure pursuit or a sport.

Gery McLaughlin: The exemptions that I was talking about related to the prohibition on the sale of swords.

Mr Maxwell: Fishing knives would not be exempt.

Gery McLaughlin: They are not covered by the ban on the sale of swords. We are licensing sellers of knives that are not intended for use at home. Fishing knives are not intended for use at home, so people or businesses selling those knives would require a licence.

The Convener: In other words, somebody who was carrying a shotgun would have to have their licence on them and the situation would be the same for a ghillie or for someone who does a lot of offshore fishing, for example for large coarse fish, and who would come and go carrying one of those knives.

Gery McLaughlin: We have moved to a separate issue. We are talking about licensing the sellers rather than the carriers. There is a distinction between those approaches.

The Convener: You gave figures for offences that are committed with non-domestic knives. Is there any evidence, or has any research indicated, that the bill might lead to people purchasing a domestic knife or implement and using it as an alternative to whatever it is that they use and commit crime with now?

Gery McLaughlin: That is perhaps a risk, but we are attempting to deal with the risk that we know exists. As I said, non-domestic knives were used in 1,100 out of 1,300 attacks. Those knives tend to be folding or locking knives. Someone can slip a folded knife in their pocket and there is no chance of them stabbing themselves, but when the knife is open and locked, there is no risk—unlike a penknife—that it might bend when they try to use it forcibly so they are sure of injuring the other person. Such knives and the much larger combat-style knives are what we are dealing with in the bill.

Colin Fox: COSLA's submission suggests that anyone who really wants to buy a knife will always find a way round any licensing restrictions. What consideration has been given to the possibility that the proposals in the bill will lead to more illicit trading in knives or that people will get knives from abroad via the internet or magazines?

Gery McLaughlin: On the suggestion that people who want a knife will always be able to get one, we are attempting to regulate the sale of knives through imposing licence conditions rather than to stop it absolutely. I do not think that what we are doing will lead to the development of a black market in knives. If people operate as knife sellers without a licence, the proposals in the bill will ensure that by doing so they are committing a criminal offence and can be arrested for it. Currently, if the police come across people selling knives in what could be regarded as an irresponsible manner, there is nothing that they can do about it. In the future, the police will be able to check that the person has a licence and if they do not they will be subject to penalties through the courts.

Colin Fox: I take that point, which is interesting. You mentioned that 1,100 of the 1,300 attacks in Strathclyde were carried out with non-domestic knives. Do you have an idea of where those 1,100 knives were purchased? How many of them were obtained via sales internationally or might, following the application of the provisions in the bill, still find their way to offenders?

Gery McLaughlin: I do not know the origin of the 1,100 knives because such information is not part of the data, but I assume that most of them were bought in Scotland.

Colin Fox: Given that 200 attacks were carried out using domestic knives, would it be fair to say that you hope that the bill will address the 1,100 non-domestic knives that were used in the assaults that you mentioned?

Gery McLaughlin: The bill will certainly do something about the sale of those knives. We know that the 200 other attacks did not occur in a public place. A number of assaults might have taken place in non-public places with non-domestic knives, so the number of assaults carried out with non-domestic knives might be more than 1,100.

Colin Fox: The licence conditions are fairly strict. A number of responses to the committee, particularly from retailers, flagged up concerns about conditions such as requiring a retailer to keep records of everybody that it sells a knife to and to obtain photographic evidence of every purchaser's identity. Retailers have asked us whether the Executive has thought about putting restrictions on the sale of knives without licensing conditions, such as not allowing them to advertise either in their windows or at all. In other words, could restrictions have been levied without a strict licensing scheme such as that which is in the bill?

16:15

Gery McLaughlin: That was certainly considered, because questions about the licence conditions were covered in the consultation. I accept that retailers objected to the conditions as making them do something more than they do at present, but a number of other consultation

respondents supported the conditions strongly and suggested that we go further. Restricting display is intended to be one licence condition that will be imposed.

Colin Fox: So your view is that the licensing scheme in the bill will bring a number of advantages that can be achieved only through such a scheme.

Gery McLaughlin: Yes, it means that the provisions apply to businesses that deal in the items.

Mr Maxwell: I want briefly to follow Colin Fox's point about buying knives on, for example, the internet. International purchases had not really crossed my mind, but there seems to be a large trade in knives through magazines and mail order. Many companies are not based in Scotland—they may be based elsewhere in the UK or perhaps even Ireland. Did you consider any ways of trying to tackle the problem of supply through mail order or magazines? A lot of so-called hunting and pseudo-military magazines sell the items.

Supplementary to that, I note that all the offences are about the sale of knives. There is no offence on the individual who does not have a legitimate use for the knives that they buy. Have you had any discussions or thoughts about offences on the individual purchaser?

Gery McLaughlin: I will start with your second point on the offences on individuals. Ministers have decided to adopt an approach that concerns restrictions on sale rather than purchase. However, individuals purchasing a sword or knife who knowingly provide the seller with false information would commit an offence, so there would be a penalty for someone not having a legitimate purpose for buying a sword.

On sales to Scotland from elsewhere, as I said in response to a previous question, I imagine that most swords that are bought here are purchased from a retailer in Scotland. We have discussed the issue with the police, and their view is that the majority of problem knives—as they see them—tend to be owned and bought by people who, generally speaking, do not have access to the internet or credit cards, which are the usual ways of acquiring goods from elsewhere. Having said that, the powers in the bill would provide us with the means to limit imports if it was chosen to use them in that way. Ministers are considering that, and perhaps the Deputy Minister for Justice will want to say more on that when he appears.

Jeremy Purvis: I want to ask just one question, although I have probably not noticed the answer when reading through the bill. What would be the grounds for a local authority to refuse a licence? Are they the same as under the 1982 act for window cleaners?

Gery McLaughlin: Indeed they are, and perhaps that is why they are not obvious when reading through. The provisions on knife licensing build on the provisions in the 1982 act that deal with the application procedure for a licence and the local authority consideration of it. The provisions include phrases such as "fit and proper person". Do you want me to go into more detail about that?

Jeremy Purvis: No, if the grounds are identical to those in the 1982 act under which a local authority can refuse a licence for a window cleaner, I am familiar with them.

Cathie Craigie: Mr McLaughlin reminded us that those who sell swords on a commercial basis will be required to take steps to confirm that a person who wishes to purchase a sword wants to do so for a legitimate purpose. How will that work in practice?

Gery McLaughlin: The general sale of swords will be banned—it will be an offence to sell a sword, other than for the accepted legitimate purposes that I set out. Sellers will be asked to get confirmation that the sword will be used for one of the legitimate purposes. For commercial sellers, the measure will be reinforced through the licensing scheme. The licensing conditions will require sellers to take details of the intended use and to take down the information that was given that convinced them of the intended use. That might be a membership card from a society or a letter from a Scottish country dancing teacher. The licensing scheme will reinforce the requirement for commercial sellers. Individual sellers will be subject to the same requirement, although not to the licensing scheme. We imagine that most individuals will sell to people whom they know and who are part of the same club or society or to people who respond to an advert in a specialist magazine.

Cathie Craigie: You mentioned that a buyer might provide a letter from a dance teacher or a club membership card. Nowadays, it is easy to produce letters and membership cards on computers. Will individuals be required to provide some form of identification?

Gery McLaughlin: Sellers will be required to take down identifying details of individuals to whom swords are sold. Although you did not say so, the point that lies behind your question is that people may provide wrong information. That is why it will be an offence to do so. We cannot reasonably expect sellers to conduct extensive background checks on individuals every time that they make a sale. However, we can ensure that, if the police find someone who has a sword and who seems to have had no good reason for buying it, the person would be guilty of the offence of

acquiring the sword in that way and, presumably, of using it in the wrong way.

Cathie Craigie: Did you consider introducing a requirement for people who want to purchase a sword for a legitimate reason to provide photographic identification?

Gery McLaughlin: Photographic identification may be required. Paragraph 114 of the policy memorandum states that the conditions that are set by ministers will require retailers

"to keep records of those to whom they sell swords or non-domestic knives".

We did not state specifically that photographic ID will be required, but I understand that several local authority licensing schemes require photographic ID. For instance, in Edinburgh, photographic ID is required to purchase some second-hand goods. The requirement is increasingly common, so some local authorities may well add it to their schemes. As I said, they will be able to add to the base conditions that the ministers set.

Cathie Craigie: Would it not be sensible for the Scottish Executive to add that condition to give uniformity of process throughout local authorities, rather than leave the matter up to each local authority?

Gery McLaughlin: I understand your point, but in striking a balance between what should be set centrally and what should be set locally, ministers decided that that matter will be set locally. However, the ministers have said that they will review the provisions in the light of experience of the operation of the licensing scheme, so, in due course, photographic ID may become a central requirement.

Mr Maxwell: I was interested in the suggestion that people might need to prove membership of a society by showing a membership card. How would that work? How would the retailer determine whether a society or organisation was legitimate? Will there be a list of approved organisations? Could I set up an organisation called the west of Scotland sword appreciation society and allow all my pals to be members of it? Would that be legitimate? Will such organisations need to be approved?

Gery McLaughlin: The idea of requiring specific organisations to be authorised was one option on which we consulted. However, ministers have decided not to go down that route, so we are not proceeding with that option.

Mr Maxwell: How would the retailer know whether the membership card that I presented was legitimate?

Gery McLaughlin: That comes back to the issue of what we can reasonably expect retailers to do. That is why it is an offence for someone to give false information.

Mr Maxwell: However, if I set up such a society along with six pals, the information that I gave would not be false. It would be true.

Gery McLaughlin: It depends on what the society is, what its objectives are and whether they fall within one of the legitimate exceptions. For example, a fencing society would come within one of the legitimate exceptions. Presumably, the person would explain that to the retailer. Specialist retailers have a general knowledge of the background to their activities. Although a retailer might not be able to spot a particularly good forgery or misinformation, a person who turned up with a rather less believable story than that of an MSP with a membership card might be turned away.

Colin Fox: Stewart Maxwell's stories are always unbelievable.

Mr Maxwell: I have a final small question. There is a trade and export market that sells Scottish replica swords and weapons to tourists and collectors. How will that trade be affected?

Gery McLaughlin: Our intention is that exports would be an exception. It would be unreasonable to require tourists who happen to be in the country to provide the membership evidence that we have discussed. Therefore, swords that are for immediate export would fall within one of the exceptions to the general ban on the sale of swords. However, such sales would continue to be covered by the licensing scheme.

Maureen Macmillan: How dangerous are the swords that are used for Scottish highland dancing and re-enactments? Surely they cannot be too sharp, given that dancers will not want to get their feet cut. What swords are we talking about here?

Gery McLaughlin: You are right that Scottish country dancing swords are probably the least dangerous. Re-enactment swords also tend to be blunt, although that is not always the case. However, such swords can be sharpened.

Maureen Macmillan: Okay, that is fair enough.

The Convener: I thank the panel very much. As I mentioned to the previous panel, if after reviewing what has been said this afternoon the witnesses want to make additional points, they can send those to the clerks and we will be happy to consider them.

As agreed earlier, we move into private session. I thank our panels of witnesses and members of the public for attending.

16:28

Meeting continued in private until 18:20.

LETTER FROM SCOTTISH EXECUTIVE JUSTICE DEPARTMENT, 30 NOVEMBER 2006

The Committee took evidence from Scottish Executive and Scottish Prison Service officials on Tuesday 24th October about the Custodial Sentences and Weapons (Scotland) Bill. The Convenor invited officials to write to the Committee with points of clarification where appropriate. We appreciate this opportunity and have provided further information below. I apologise for the delay in getting this information to you.

To set the context, I think it is worth keeping in mind that the proposals in the custodial sentences element of the Bill do not introduce an additional "sentencing option". Their purpose is to reform the way sentences are managed so that offenders will be subject to restrictions from the beginning of their sentence through to the end. Other than for sentences of less than 15 days, all offenders will also now spend time on licence in the community in addition to the period in custody. This will allow offence-related and rehabilitative work begun in custody to be followed through to the community part, providing the prospect of true end-to-end offender management. The conditions placed on an individual on release from the custody element of the sentence will be informed by the joint risk assessment and his or her response to work begun in custody.

Areas where further clarification might be helpful to the Committee are preceded by the questions, shown in bold italics, below.

Parole Board

Was there a particular reason for the change [from a three member to a two member tribunal], or was it simply a question of efficiency and the fact that the new system has worked elsewhere?

What will happen if the two members of a tribunal cannot reach a unanimous decision?

The Committee will recall that officials confirmed at the evidence session on 28th October that neither of these matters are in the Bill. They are procedural issues for the Parole Board Rules (which the Committee will see). The outcome of the consideration on these matters will not affect the policy as set out in the Bill. As regards the matter of members on a tribunal, we are already consulting the Parole Board about the best structure while ensuring that the Board is able to do its business in the most efficient and effective way.

Mention was also made of the experience in England and Wales. However, the Parole Board for England and Wales's report shows that tribunals there still comprise 3 members. Clearly we will keep this in mind in our ongoing discussions with the Parole Board for Scotland on the drafting of the Parole Board Rules. However, I can confirm that Scottish Ministers are committed to ensuring that the Board is legally competent and that it is properly resourced, but resourced in the most efficient and adequate way while at the same time securing best value for money.

The Committee noted the proposal for unanimity in Parole Board decisions. This is mentioned in paragraph 151 of the Financial Memorandum and is also commented upon in the Parole Board's evidence, in paragraph 10. It may be helpful to expand a little on the proposal. The intention is that when the Board sits as a tribunal (which we anticipate will be the case in most of the references under the Bill) the prisoner concerned may only have his or her release directed by the tribunal where both members agree that this direction is appropriate. In other words, both members will make up their minds about the case, but the tribunal itself may only direct release where that is the unanimous view of both members. Where there is no unanimous agreement on release, the tribunal must not direct release. This will mean that prisoners will no longer be released where one of the tribunal members is not satisfied that this is appropriate.

Monitoring after end of sentence

It is possible that a recalled offender could spend almost 100% of the sentence in custody. In that situation, how will the offender be reintegrated into the community?

Officials explained the community part licence process and confirmed that this would end when the sentence expired. However, the Committee might find it helpful to have some more information on the community component. We would like to take the opportunity to remind the Committee that all offenders receiving a custody and community sentence (those given a sentence of 15 days or more) will spend a period in custody and a period in the community on licence. Licence conditions

will be tailored to individual risk and needs. This means that for the first time all offenders will be subject to some form of restriction for the entire length of the sentence. This offers additional support to a large group of offenders who under the current arrangements would be released automatically and unconditionally at the half-way point of sentence without any means of control or support.

While licence conditions that relate to a sentence expire when the sentence ends, other measures are in the process of being put in place with a view to improving public protection from the highest risk offenders. Joint working arrangements between the police, the local authorities and the Scottish Prison Service will be achieved by adopting the Multi Agency Public Protection Arrangements (MAPPA). The network of MAPPAs will ensure improved management of sexual and violent offenders in the community, including those offenders whose sentences are spent but who the statutory authorities consider to be people who may cause serious harm to the public. This group will, where needed, be able to apply for voluntary assistance from their local authority to assist with their re-integration. The Community Justice Authorities (established under the Management of Offenders (Scotland) Act 2005) have an important role to play in building the local partnerships that will offer the sorts of rehabilitative services that these offenders, and others, will need on their release.

As well as the arrangements described above, the "sex offenders register" was introduced in 1997 by the Sex Offenders Act 1997 (the provisions are now contained in the Sexual Offences Act 2003). It has proved an invaluable tool for the police to monitor convicted sex offenders within their area. There is no central register as such; individual sex offenders notify their details to the local police and are identified on the Scottish Criminal Records Office's Criminal History System. The police use the register to manage offenders within the community and to identify potential suspects when a sexual crime is committed. Provisions in the Police, Public Order and Criminal Justice (Scotland) Act 2006 include giving the police the power to take data and samples from sex offenders if such data is not already held; requiring registered sex offenders to provide passport details; and giving the police powers to enter and search sex offenders homes for risk assessment purposes.

It is also possible for a Sexual Offences Prevention Order (SOPO) to be made. The police and courts must be satisfied that an offender has acted in such a way as to give reasonable cause to believe that a SOPO is necessary to protect the public or any particular members of the public from serious sexual harm from the offender. For example, in relation to an offender with convictions for sexually assaulting children who is, following his release, found to be loitering around schools and talking to children, the police may have reasonable cause to believe that there is a risk of the offender re-offending, in which case he may apply to the court for a SOPO. The prohibitions are specific to each case but, for example, an order could prohibit an offender who has a history of offending against children from being alone in the company of children or from being involved with organisations that would bring him into close contact with children. Any prohibition would need to be justified in relation to the risk and would need to be capable of being policed effectively. The prohibition must be necessary to protect the public or particular members of the public from serious sexual harm. A SOPO has effect for a fixed period which will be specified in the order. The period must be no less than 5 years. A person guilty of an offence of failing to comply with a SOPO is liable on conviction on indictment, to 5 years imprisonment.

Courts will still be able to impose extended sentences for serious sexual and violent offenders. This occurs at the point of sentencing and has the effect of adding an additional "extended" period to the community part of the sentence, increasing the period during which licence conditions (and the possibility of recall to custody if required) can be applied.

In addition, the courts now have at their disposal the Order for Lifelong Restriction (OLR). This a new sentence which provides for the lifelong supervision of high risk violent and sexual offenders and allows for a greater degree of intensive supervision than is the current norm. The OLR was made available to the High Court to use from 20 June 2006. OLRs will target those offenders who are assessed as posing the highest risk to the public. An offender who is sentenced to an OLR will, for the first time, be subject to a risk management plan that will be in place for the rest of the offender's life whether in custody or on licence in the community. Once they have served the punishment part of the sentence that the court considers is right for the crime itself, the Parole

Board for Scotland will consider when the risk they pose is acceptable enough to allow the offender to be released into the community. This means that there is no guarantee that the offender will be released immediately after the punishment part expires.

Prison population

Will the commitment of the Scottish Executive Justice Department and this Parliament to reducing the overall numbers of people in prison be compromised by the measures in the bill that seek to put people in jail and make them stay there, so that more people will be in jail for longer?

In line with the undertakings given on 24th October the chart showing the expected increase in the prison population is attached at Annex 1. This shows the anticipated number of designed cells available to SPS; what the population is expected to be without these measures; what it is estimated to be with these measures; and the assumed breach rates during the community part of the sentence. (An explanation of the dip in the design capacity can be found in the Scottish Prison Service's published Business Plan if required.)

SPS annual population projections, which have a track record of accuracy over a number of years, use observed trends in sentencing behaviour over the last 34 years to project the population for future years. They assume that sentencing behaviour remains unchanged. The methodology takes no account of potentially related factors such as demographics or recorded crime as no statistical relationship has been established between those factors and the prison population.

The chart modelling the effects of the Bill's measures contains, for the first time, predictions. These apply certain assumptions about change in behaviour. It is the first time that SPS has been required to model such potentially very large changes in population. The assumptions we have made are:

- Implementation affects all new sentences at the same time i.e. there is no phasing of implementation by sentence type or length;
- The "risk of harm" test might correlate to those convicted and sentenced to more than 1 year for a sexual or violent offence and with a history of such convictions. This "test" was applied to those leaving custody in 05-06;
- Around 15% of offenders reaching the 50% custody point might therefore be referred to the Parole Board for a decision on whether they should remain in custody;
- The Parole Board would direct 50% of those referred to proceed immediately to the community part of their sentence, with the remainder staying in custody until the ¾ point of their sentence. Our evidence is that, of those referred to the Parole Board over the last 5 years, the Board has recommended 50.5% for release;
- 15% of those on full supervision in the community (with an initial sentence over 4 years or related to sex or violence, and not previously covered by licence conditions such as attached to a life licence) will commit a breach of their licence serious enough to result in a return to custody. This assumption is based on rates of current community disposal breaches serious enough to result in custody, and in lifer recall rates.

If the above assumptions prove to be incorrect or under-stated, the estimated effect on the population will be different from that shown in the chart. The resources required to implement the measures would then be different. In this regard it might assist the Committee for us to clarify the point quoted from the SPICe briefing that "offenders who present as a high risk of re-offending and/or who pose an unacceptable threat to public safety will be referred to the Parole Board by Scottish Ministers. This is not correct in every regard. The test in the Bill is a test of "harm" not of risk of "re-offending". That is very important in the context of the potential impact of these measures on the prison population. Re-offending and return to custody rates are also in the public domain and are closer to 50% than the 15% assumed here as meeting the "harm" test for referral to the Parole Board. It might be helpful to note that SPS, CJSW and Community Justice Authorities are all working to reduce re-offending already through the arrangements provided for in the Management of Offenders legislation.

In reading the transcript, there is a point of clarification which might assist the Committee. The evidence pointed to the fact that it will be the Scottish Ministers who take the decision on whether or not to refer a prisoner to the Parole Board at the end of the custody part of his sentence. SPS

and local authority criminal justice social work departments will have roles and responsibilities in relation to the risk assessment that will inform that decision. When the Bill was published on 3rd October it was also announced that an independent review would look at the Scottish Ministers' involvement in the decision making process in individual cases including the role proposed for the Scottish Ministers in deciding whether an offender should be referred to the Parole Board. This review will clarify the precise arrangements which should apply to that decision making process as it is implemented. Recommendations on the implementation route are expected by the end of 2007.

Community part and supervision

Are you confident that offenders will have access to appropriate rehabilitation opportunities?
Have the resource implications been considered?
What does supervision entail?

The new arrangements for combined sentences will explicitly place the responsibility for taking up opportunities for rehabilitation and for future good behaviour on the offenders with a range of sanctions in place if they fail to comply with their licence conditions. Within this new approach, the nature of offender management will be tailored to the risks posed by, and the needs of, the offender rather than one standard package. This will require a new shared understanding of what is generally understood to be the nature of supervision with CoSLA, ADSW and the voluntary sector.

Supervision will be an automatic condition for sex offenders serving sentences of 6 months or longer, offenders given a custody part in excess of 50% by the courts, those whose cases have been referred to the Parole Board and those serving sentences of 4 years or longer who, historically, have been subject to statutory supervision requirements on release. The intention is therefore that all offenders serving a sentence of 6 months or longer will receive some form of statutory supervision as a condition of release on licence. The intensity of supervision will vary from offender to offender and will be informed by the joint risk assessment which will be carried out. The risk assessment will have regard to a range of factors including the nature of the offence, the offender's response during the custody period and the anticipated circumstances on release.

Most of the under 6 month group will not require what we understand as the standard statutory supervision by qualified criminal justice social workers. The needs of this group – and the time available to work with them – suggests that we need to take a different approach. This is much more about getting this group into contact with the range of services that they need – such as drug treatment or accommodation services – to stabilise their lifestyles and to move them away from offending. It is a service more akin to signposting them on and brokering access to services than supervision by social work. It puts the onus, quite explicitly, on the offender to be of good behaviour, makes them responsible for what they do and provides the criminal justice system with sanctions if they fail to accept this responsibility.

For those serving 6 months or over, the intensity and nature of the supervision will be informed by the joint risk assessment, which will also suggest whether a qualified supervising officer is needed. The risk assessment will have regard to a range of factors including the nature of the offence, the offender's response during the custody period and the anticipated circumstances on release. Offenders recalled to custody until the end of their sentence will, where needed, be able to apply for voluntary assistance from their local authority to assist with their re-integration.

Making all offenders subject to restrictions for the full sentence enhances public protection but recognise the considerable challenge in making sure that the community licence structure is delivered adequately and proportionately. The joint Planning Group is already looking at how best to deliver.

The Planning Group I mentioned above, which includes members from the Association of Directors of Social Work, COSLA, Sacro and the voluntary sector, will be looking amongst other issues at the most appropriate arrangements for supervision and will offer recommendations on how best these should be developed.

There are some offenders for whom a custodial sentence might not be the most effective way of getting them to change their offending behaviour. We are looking at ways in which community disposals might be better utilised. While this is not dealt with specifically within this Bill the Committee might find it useful to be reminded that this is just one of an ongoing serious of measures aimed at transforming Scotland's criminal justice system.

Custody only

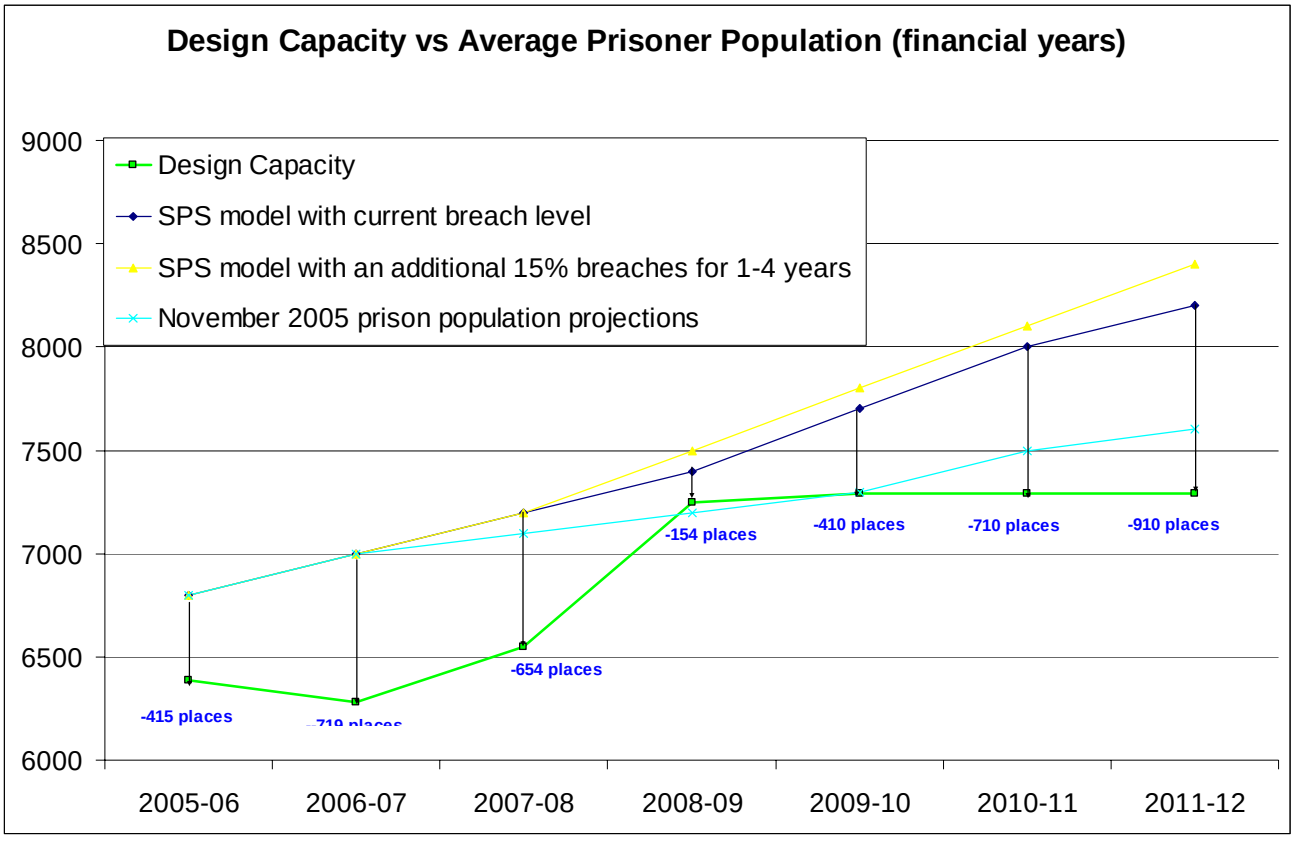
Has any gender analysis of this proposal been carried out?

The Committee was interested in the effects the legislation will have on fine defaulters in the context that many of these are women. While no specific research was carried out in relation to this for the purpose of this Bill, Ms Gwyon from Scottish Prison Service mentioned that she would make available a letter sent previously to the Justice 1 Committee on this matter. A copy of that letter is attached at Appendix 2.

The information in this letter has been contributed to and agreed by Scottish Prison Service.

I trust the Committee will find this information useful and of interest.

Appendix 1



Appendix 2

CRIMINAL PROCEEDINGS ETC (REFORM) (SCOTLAND) BILL

Thank you for the follow-up queries from the Committee relating to any potentially differential impact of the Bill's provisions on women or young people as regards prison numbers.

As we understood it, Committee members were interested in any breakdown we could provide relating to the figures we had already given. In addition, an interest was expressed in whether young people were more likely to offend whilst on bail or breach bail and whether this might have a statistically significant bearing on the likelihood of an aggravated sentence being given.

We have looked at the data we have on fine default. In 2004-05 the average daily prison population of fine defaulters was 61. 4 of these were women (6.6%). 7 were young offenders (under 21) (11.5%). These figures compare with the following proportions of our overall prison population: 4.9% female; 21.1% young offenders. The overall context is that 0.9% of the total prison population are fine defaulters compared with 0.9% of young offenders and 1.2% of women.

The numbers involved are very small and we have been advised that statistically it is hard to draw any conclusions. It seems that the female population is made up of a slightly higher proportion of fine defaulters than the male prison population so to the extent that the Bill's fine enforcement arrangements should help reduce the numbers sentenced for fine default, it may be that women stand to benefit to a slightly greater extent.

Although it is possible to establish the proportions of those receiving bail that are women or young people, the figures showing those bailed and having previous convictions are not broken down in this way. As such it is not possible, using our current information, to provide a breakdown of the gender or age impact for our estimate of the 25-35 potential extra prisoners per night arising from the new bail provisions. This figure was obtained by examining the numbers who had previously received bail for one of the offences set out whilst having a previous relevant conviction as set out in the Bill.

Finally we have looked at some research conducted by the Scottish Executive: Offending on Bail: An Analysis of the Use and the impact of Aggravated Sentences for Bail Offenders. This is published on the Scottish Executive website at www.scotland.gov.uk/Publications/2004/03/18848/32719. The research found that younger accused were more likely to offend on bail and females were less likely to offend. But it also found that "an offender's gender, age and type of offence…committed were found to have no statistically significant bearing on the likelihood of an aggravated sentence being given". The research also states that in the vast majority of cases (90%) where an aggravated sentence was given, the aggravation represented 50% or less of the total sentence.

It seems that within our initial estimate of an overall slight impact, we can establish no potentially differential impact on either women or young people of any statistical significance. I hope this additional information is helpful to the Committee.

29th Meeting 2006 (Session 2) 7 November 2006

SUBMISSION FROM THE ASSOCIATION OF DIRECTORS OF SOCIAL WORK AND THE CONVENTION OF SCOTTISH LOCAL AUTHORITIES

Introduction

The Convention of Scottish Local Authorities (COSLA) and the Association of Directors of Social work welcome the opportunity given by the Scottish Parliament Justice 2 Committee to contribute to the scrutiny of the Custodial Sentences and Weapons (Scotland) Bill which has wide-ranging implications for local government. COSLA and ADSW support the overall policy objectives of the Bill which broadly represent an ambition to achieve safer communities and to prevent re-offending which is shared by all in local government.

However, COSLA considers that the Custodial Sentences and Weapons (Scotland) Bill needs to be scrutinised and further developed in a number of areas to ensure effective implementation. These areas are outlined below in:

Section one: Custodial Sentences
Section two: Weapons

Section one: Custodial Sentences
This evidence on the Custodial Sentences element of the Bill is provided jointly by COSLA and ADSW. Whilst we welcome the increased emphasis on community-based sentences as an approach to reduce reoffending, we recognise that **the measures contained in the Bill will result in considerable additional pressures on local government and on Criminal Justice Social Work services in particular**.

The Bill offers an opportunity not only to reduce the ever-growing prison population but also to tackle Scotland's high rates of re-offending. **While the Bill focuses on offenders sentenced to between 6 months and 4 years, there is a clear opening to make a much-needed impact on re-offending rates among those sentenced to between 15 days and 6 months.** To stop the revolving door of prison/re-offending we need to re-examine areas for improvement to meet the needs of this group.

Clearly, making provision to reduce re-offending based on individual risk of re-offending rather than length of sentence will require commensurate additional capacity. **COSLA and ADSW consider that for reasons of effectiveness and efficiency, qualified social workers should be deployed to work with high risk serious offenders while para-professionals focus their work on lower risk offenders.**

Provisions of the Bill requiring particular scrutiny

Minimum Custodial Sentences
While for some persistent, "low-level" offenders, a short prison sentence may provide sufficient impetus to break the offending cycle, for the majority of offenders very short custodial sentences are ineffective in deterring, punishing, reforming or rehabilitating. There is also a disproportionately high financial cost to processing very short-term prisoners into and out of prison**. For reasons of both effectiveness and cost, therefore, COSLA and ADSW agree in principle that short sentences are ineffective and it is COSLA's view that they should be used only as a sentence of last resort for those most persistent low-level offenders.** Any resulting upward drift in sentence length, however, would clearly be unwelcome and should be closely monitored.

Alternatives to custody for breach of licence and for fine defaulting should be sought for the same reasons of effectiveness and cost. There are questions around whether breach always warrants custody. The current breach rate is around 25% and it is anticipated that breach rates will only further increase with the introduction of the Bill.

Appropriate Authority
Subsection (4) defines the appropriate local authority as either the one in which the offender resided immediately prior to the offence or the one the offender intends to reside in upon beginning the community part of her or his sentence on licence. This **lack of clarity** as to appropriate authority will inevitably lead to uncertainty over exactly which authority is responsible and takes no account of the difficulties in tracking offenders effectively across boundaries, especially those on short-term sentences.

It is further suggested by COSLA and ADSW that **offenders should be imprisoned as close to their family or likely future accommodation as possible** to maximise the likelihood that they retain relationships and settle sustainably on their release. Young offenders and women offenders, in particular, currently face specific issues in being placed in institutes or prisons, respectively, often at a considerable distance from their home, and ways of overcoming this potential dislocation need to be sought.

Risk Assessment
COSLA and ADSW welcome the recognition that joint working arrangements should be put in place between Scottish ministers and local authorities in relation to the assessment and management of the risk posed by custody and community prisoners. There are two elements of risk which require to be assessed and managed – risk of harm and risk of re-offending. It should also be noted that level of risk posed is not necessarily associated with the length of sentence. Domestic abuse, for example, can draw a relatively low tariff yet risks to partners and children can be extremely high.

It is essential that Criminal Justice Social Workers are jointly involved in risk assessments together with colleagues from the Scottish Prison Service to ensure appropriate conditions are attached to licences, that key transitional arrangements are in place and that local provision is made available and used. Indeed, COSLA and ADSW consider that it is essential that local authority social workers attached to prisons are actively engaged in sentence planning and delivery of appropriate interventions and programmes from the outset to assess and manage risk of harm and risk of re-offending. This joint process of risk assessment between Scottish Prison Service and local authority Social Workers raises difficulties related to the contract culture within SPS which would benefit from consideration.

There are **significant resource issues** arising from the assessment process. Criminal Justice Social Workers will be engaged in a large number of **additional risk assessments** as a consequence of this Bill and its requirement to assess the risk of harm from all those sentenced to 15 days or more.

Supervision
"Supervision" is a wide term which requires closer definition as it can range from signposting and brokerage to monitoring and direct support and one-to-one programme delivery. Local authority social workers support:

- rehabilitation and re-settlement of the offender, including support to secure appropriate housing, find employment, address substance misuse, and make a positive contribution to their community;
- prevention or reduction of further offending through participation in programmes;
- protection of the public from harm through monitoring and supervision, liaison with police, ensuring compliance with licence etc; and
- the family of the offender.

There are currently around 4800 prisoners serving custodial sentences of 15 days to 6 months. The Bill sets out that only those sentenced to over 6 months in custody will be required to receive supervision. Those offenders sentenced to between 15 days and 6 months custody will be released on licence unless they are assessed as specifically needing supervision.

Whilst it is the case that not every prisoner released will require full supervision, **it is likely that the majority of offenders, including those at the lowest end of the tariff scale, would benefit from an assessment of their wider welfare needs** and, at the very least, signposting to provision – be it registering with a GP or accessing training. **We consider that more needs to be done at**

all levels of offending if we are to break the cycle of re-offending, building on the role of prison-based social workers.

Across the Community Justice Authorities, there will be different organisations with the skills and knowledge to deliver this signposting or "brokerage" role. There may also be merit in exploring further the concept of "link centres" or hubs in the community which bring together the range of services and facilities to support offenders under one roof.

COSLA and ADSW support the proposition that the level of "supervision" required should be proportionate and tailored to the risk of both harm and of re-offending that each individual offender presents. Whilst for the purposes of assumptions for allocating resources and identifying additional needs, it is possible to identify around 3 different tiers of supervision (see appendix 1), in practice, each individual's supervision package will need to be **individually tailored** to meet their specific requirements.

At the high end of the tariff scale, it should be noted that the impact which supervision can have on reducing further offending must be kept in perspective - **more can be expected by the public and media than can realistically be achieved.**

Supervision will, however, be a condition on the licence for:
- Life prisoners;
- Custody and community prisoners with sentence of 6 months or more;
- Prisoners released on compassionate grounds;
- Extended sentence prisoners;
- Sex offenders; and
- Children.

There are currently around 3800 prisoners serving sentences of between 6 months and 4 years who will be eligible for supervision. **Criminal Justice Social Work currently supervise around 600 offenders across Scotland and, clearly, will be engaged in supervising much higher numbers of offenders during the community part of the sentence and will require a commensurate increase in resources.**

Community Sentences
COSLA and ADSW welcome the community sentence element as an effective means of reducing re-offending. Offenders need to be seen to take responsibility for their behaviour in the community - punishment through deprivation of liberty alone does not necessarily result in reform. Community sentences focus on taking responsibility, making reparation and being assisted into an inclusive community.

The success of community sentences will, however, be dependent on:
- **research** into what works, with findings communicated to politicians and senior managers;
- the range of **fully-resourced measures in the community** to reduce re-offending and to help offenders rehabilitate;
- transitional care arrangements for **drug and alcohol addictions** widely available within prisons and linking effectively with service providers in the community;
- **universally-available programmes** based on effective practice, delivered to consistent, accredited standards.

There are also specific **gender** issues which are not addressed by the proposed legislation. Many of Scotland's short-term prisoners are women and we are not currently well-equipped to work with women offenders.

Communication
COSLA and ADSW perceive a need to publicise and explain community and hybrid sentences to the wider public and in particular, a need for **shared messages from Ministers, MSPs and Councillors**.

Workforce issues
It is anticipated that the proposed measures will only intensify existing recruitment, retention and training issues across Social Work. **There are capacity issues not only for Social Work Services but for voluntary sector and other partner agencies in securing sufficient people with the appropriate skills to deliver this challenging agenda**. We estimate, for example, that a 10% increase in Social Work staff would be required to deliver the measures in this Bill.

We propose that qualified social workers should be deployed to work with the higher risk offenders while a range of para-professionals and voluntary organisations will be best placed to work effectively with lower risk offenders. While the arrangements for who delivers the latter role and how it is commissioned or contracted will be best determined locally, through the Community Justice Authorities, agreement is required nationally on the skills, functions and menu of services which should be available to low risk offenders.

Shared responsibility for successful delivery through partnership
In order for the Bill to achieve its stated policy objectives it is crucial that partnership is built into the provisions, in particular to require all relevant agencies to work jointly and to contribute to the rehabilitation of offenders. This partnership also relates to the Judiciary as for this Bill to have any impact it is essential that the influential law professions are on board and recognise the impact that a combined structure sentence can have on the rehabilitation and resettlement of offenders.

Finance
The financial memorandum outlines that £7.45m will be available to oversee those subject to supervision over 6 months. This equates to £2,000 per offender. **COSLA and CJSW do not consider this allocation to be adequate.** We estimate **that the unit cost for supporting a high risk offender averages nearer £5,000** (including Social Enquiry Report costs, Keyworker Drug and Alcohol costs, employability services, resettlement facilitation, costs of breach, and offence-focussed work) and for lower risk offenders the unit cost is closer to £3,500, with a requirement for around £10m to oversee those subject to supervision over 6 months alone (see appendix 1). COSLA and ADSW will provide more detailed estimates of costings to the Finance Committee.

Caution must be exercised with regard to the estimates for additional financial burden. This is a new approach based on risk of harm rather than length of sentence but we only have information on **current** prisoners and patterns of activity. **Services such as probation and community sentences, court-based social work, throughcare, supervision, supported accommodation, services specifically for women offenders, and drug and alcohol rehabilitation all need to be properly resourced if the risk of harm and re-offending is to be effectively reduced and if offenders are to be fully integrated into their communities.** Local authority community-based disposals are not currently funded at a level which can realistically achieve the expected reduction in reoffending.

Increased levels of
- monitoring and supervision of attendance;
- report writing, in particular Social Enquiry Reports;
- brokering and signposting to appropriate support and interventions; and
- license breaches

will all generate increased workloads and the need for additional staff and, in turn, additional office accommodation. There will be significant implications for prison-based, court-based and community-based Social Workers due to the increased assessments, reports and supervision required as a result of this legislation. There will also be an increased demand on accommodation and supported accommodation costs for prisoners released from prison.

Section two: Weapons

COSLA broadly agrees with the terms in Part 3 of the Custodial Sentences and Weapons (Scotland) Bill in relation to the regulation of knife and sword sales and welcomes the increased role of Local Authorities in the regulation of knife sales and the prevention of knife crime. The proposed Bill has the potential to bring a consistent approach to the licensing and regulation of the sale of knives and swords.

However, COSLA proposes a number of areas below that require further consideration.

Unlicensed Dealers
Premises where unlicensed dealing in knives is suspected or where a dealer is suspected of breaching conditions of their licence may be entered in order to ascertain whether the provisions of the Act is being complied with. However, these powers are only available after a warrant has been granted by a sheriff or Justice of the Peace. The Bill, as it currently stands, supplies no provisions to enter an unlicensed premise without a warrant nor is this available under the Civic Government (Scotland) Act 1982.

COSLA suggests that the legislation be amended to **include powers allowing Local Authority Officers and Constables to enter unlicensed premises in order to check compliance with legislation.** In addition, if there is reasonable belief that an offence has been committed, there should be the **power to seize goods and documents.** COSLA also considers that a power to **test purchase** knives would be helpful.

Private Sales
The provisions could be open to abuse by **second-hand dealers** who could sell knives, owned by private parties, for sale in their shop premises. These items could potentially be sold on behalf of another on a commission basis and this situation would not be subject to licensing and the consequent conditions. Similarly, non-domestic knives sold **privately at auction** will not invoke licensing conditions. COSLA considers that **due diligence** should be required of all sellers.

Knife dealers' licence conditions
COSLA recommends that the Bill should be amended to place a condition on dealers to **display a notice** stating the offences in the Criminal Justice Act 1988 as amended regarding the sale of knives etc. to persons under 18 years. We also suggest that current provisions such as the Knives Act are taken into account to ensure that the **marketing** of knives is controlled and that inappropriate use is not promoted. Clarity is also required on **licensing of sales of knives and swords from temporary points of sale** across Scotland, for example at events and festivals.

Definition
The Bill contains no definition of a "non domestic" knife. This could lead to enforcement problems. COSLA suggests that there should be an amendment to ensure that the Bill clearly **demonstrates a definition of "sword" and clarity to ensure craft knives, trimming knives, bush knives, and kukri or Ghurkha knives are captured within this definition**.

Monitoring
We propose that knife crime should be monitored by the Police to capture the types of knives used following the introduction of this legislation to ensure that knife purchase is not simply displaced from non-domestic to domestic or from points of sale in Scotland to points of sale in England or abroad, beyond the reach of the legislation.

Global Market
While internet and mail order sales from depots within Scotland can be monitored and regulated within the scope of this legislation, **sales made from England** or beyond will not be subject to such regulation.

Resourcing
A cost recovery model is the suggested form of financing the licensing scheme. However, it must be recognised that over the years, **a number of small-scale, supposedly "cost neutral" schemes have been implemented by local authorities**. Being small-scale, they do not individually warrant a dedicated member of staff. However, **cumulatively, they represent a growing burden on local authorities**. **There are a relatively small number of businesses that sell knives and the cost recovery model suggested has potential to move the cost of the scheme on to local authorities through additional administration and regulation in ways which will not be "cost neutral".**

Conclusion

COSLA and ADSW welcome the general direction of the Custodial Sentences and Weapons (Scotland) Bill. However, we propose that the potential it has for impacting on both community safety and reduced offending, will be very much dependent on its comprehensiveness, its integration with the wider community justice and community safety agendas, and the level of resourcing made available to implement it effectively.

Appendix 1: A Tiered Approach to Post Custodial Supervision

Tier One (voluntary sector provision)	**Tier 2 (resettlement type services)**	**Tier 3**
Serving less than six months (excl fine default): average period on licence of 7 weeks (50%)	(a) Serving 6 mths -1 yr: average period on licence 4.5 mths (50%) (b) of those serving 1-4 years/assessed as not a risk of serious harm: average period on licence: 15 mths (50%)	Serving 1-4 years and assessed as risk of serious harm: average period on licence 7.5 mths (25%)
2005-06: 4,795 liberations	(a) 1,959 (b) 1,536[1] 2005-6: 3,495	2005-6: 230[2]
No involvement from SW in assessment	Risk assessment from Prison SW	Risk assessment from Prison SW
No case worker	Unqualified case worker	Qualified case worker
Sign posting to services – particular issue will be housing for any one who is in prison for more than 13 weeks	Provision of standard services/ accommodation (100%), employability (100%) and substance misuse key working (10%)	Provision of standard services: accommodation, employability and substance misuse key working (10%)
No involvement in offence-focussed work	(a) No involvement in offence-focused work (b) Some limited offence-focussed work if on licence for more than 6 months	Intensive offence-focused work if on licence for more than 6 mths (but in the absence of offence-focussed work undertaken in SPS this element would increase substantially)
No involvement of SW in breach	SW breach report (25%)	SW breach report (25%)
Notional unit cost of £700	Around £3,500 for a full year of service	Around £5,000 for a full year service
Cost for service around £ 3,500,000	Cost of service based on average length of licence: around £8,500,000	Cost for average of 7.5 mths to each client: £675,000

These are broad costs and include management, accommodation etc. However it may that the establishment of such a significant service will demand a major capital investment in accommodation. A very rough calculation suggests that an additional 100 staff would be required across Scotland to provide case-working and offence focussed work to the tier two and three services: an increase of about 10% in the staff group based on the 2005 figures. This is assuming that associated services e.g. accommodation, employability etc were provided by other agencies and therefore social work would not have a capital cost for their accommodation.

[1] 87% of the liberations in this sentence length i.e. excluding convictions of non-sexual crimes of violence and crimes of indecency

[2] 13% of the liberations in this sentence length i.e. those with convictions of non-sexual crimes of violence and crimes of indecency

SUBMISSION FROM THE ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND

Thank you for your correspondence addressed to Sir William Rae, ACPOS Honorary Secretary, dated 10 October 2006. I would offer the following written submission on behalf of the ACPOS Offender Management Portfolio in relation to the above Bill. Unfortunately, I am not in the country to give evidence myself on 7th November 2006 and have therefore arranged for Detective Superintendent James Cameron, Chair of the Offender Management Working Group and Detective Superintendent William Manson, Lead on the ACPOS Management of Offenders Implementation Team will attend the Scottish Parliament, in my absence.

ACPOS has been a member of the recently formed Custodial Sentences and Weapons Bill Working Group and will be taking part in the sub groups which will have responsibility for scoping the impact of the proposed legislation.

It is noted that the Bill contains provisions on the two broad policy areas of custodial sentences and that of swords and non domestic knives.

Custodial Sentences

The replacement of the system for automatic release for some offenders is welcomed and the new system should provide a risk assessed and managed return into the community. The punishment aspect of the sentence followed by supervision in the community should be easily understood by the offender, criminal justice professionals and the general public.

The release of offenders into the community must be a considered release with due regard to risk of harm based on risk assessment as opposed to many offenders in the previous system who often 'did their time'.

The Integrated Case Management process now being used within the Scottish Prison Service will provide an effective structure for the management of offenders whilst in custody. It is vital that the release of offenders is influenced by effective risk assessment in relation to the risk that person may pose to the community and not only be based on behaviour whilst in a prison environment.

There is likely to be an increase in the number of offenders released on supervision which may increase the burden on Criminal Justice Social Work staff. This increase has yet to be fully scoped, however it is also likely that if there is an increase in offenders being supervised in the community there is likely to be an increase in offenders breaching the terms of their supervision and being returned to prison. Cross border powers of detention and responsibility for prisoner escort and transfer should be clearly defined.

It is important that a system is developed to ensure that if an offender presents a serious risk of harm to the community or is seriously breaching the conditions of supervision they are returned to custody without delay and this provision should be achievable outside office hours.

The release of prisoners into the community must link into the proposed Multi Agency Public Protection Arrangements (MAPPA). This will allow for defensible decision making and management of the identified risks involved. The MAPPA in respect of Registered Sex Offenders will be in place by March 2007, however the arrangements for violent offenders will not be operational until later. The MAPPA is only suitable for the management of Sex and Violent offenders.

Information sharing protocols between partner agencies supported by the concordat and within the 'duty to cooperate' are still in the process of development. It is essential that criminal justice partners have clear information sharing guidelines to ensure accurate risk assessment and to inform effective offender management.

Weapons

Restriction on the sale of non domestic knives and swords is welcomed by ACPOS.

Due consideration has been given to those with a legitimate reason for trading in such articles with the minority of the community who may have a legitimate reason for possessing them.

The enforcement aspects of the legislation seem to be proportionate and achievable to assist in tackling an aspect of knife crime within a violence reduction strategy.

The damage inflicted daily across Scotland through the use of such weapons is clearly evidenced through the work of the Violence Reduction Unit and Health information from Accident and Emergency Departments. Restriction on the availability of non domestic knives and swords is likely to encourage retail responsibility and may reduce the volume of combat designed weapons in the community over time.

SUBMISSION FROM THE ASSOCIATION OF SCOTTISH POLICE SUPERINTENDENTS

The Association of Scottish Police Superintendents is grateful for the opportunity to comment on the general principals of the above Bill.

While the Association is generally supportive of the need to consider alternatives to custody to ensure that the prison population is reduced and that prison is retained as the ultimate sanction for serious offenders, there are concerns that financial and political considerations may dictate the agenda. The Association considers that there is a need for increased investment in non-custodial penalties which are positive and offer better chances of rehabilitation of offenders, particularly young offenders in the early stages of their criminal career.

The Association believes that sentencing policy should take cognizance of the protection of the community as well as the rehabilitation of the offender. It is felt therefore, that community penalties should be directed at those who commit minor offences or do not have a substantial criminal record. Such penalties are not considered suitable for those who have committed serious crime or habitual recidivists. Nor should the more serious sexual cases ordinarily be eligible for a community disposal.

The Scottish criminal courts already have available to them a wide range of sentencing disposals ranging from imprisonment to absolute discharge. Until relatively recently the range of non-custodial sentences available to the courts has been largely limited to: admonition ; caution; absolute discharge; the fine and the probation order. In 1979 the Community Service Order (CSO) was introduced and this has been followed by the Compensation Order (1980); the Supervised Attendance Order (1990) and, more recently, the Drug Treatment and Testing Order and the Restriction of Liberty Order (1998).

In 2000, only 13% of those convicted of crimes and offences were given a custodial sentence. However, over the last half century the average daily prison population has increased threefold from around 2,000 in 1950 to 5,869 in 2000. In the last decade an increasing number of convicted offenders have been sent to prison both in absolute and proportionate terms. In 1990, 12,969 of 176,558 persons with a charge proved against them received a custodial sentence (7%). Ten years later the number of persons with a charge proved in court had fallen by 33 per cent to 118,009 but of these, 15,265 (13%) were sentenced to a period of imprisonment.

This upward trend in the use of imprisonment has coincided with an increase in the average length of sentence handed down by courts in recent years. While, in 1990 the average custodial sentence imposed was 187 days, in 2000 this had increased to 217 days. Both of these factors have had an impact on the steady growth of the prison population. One result has been overcrowding, particularly in local prisons. In March 2001 the average population of Scottish prisons peaked at 6,253 against a capacity of 5,896. In comparative terms Scotland has one of the highest incarceration rates in the European Union. The great majority of custodial sentences handed down by Scottish Courts are for short periods. In 2000 for example, 82% of custodial sentences were for 6 months or less.

In 2000, 7,703 people (23% of entire prison population) were imprisoned for defaulting on a fine. Of those, 29% had been fined for crimes involving dishonesty, 29% for miscellaneous offences (which

include simple assault, breach of the peace and drunkenness) and 20% for offences involving motor vehicles. The average fine outstanding in 2000 was £241 and the average length of imprisonment for fine default was 11 days.

As at 31 March 2001 the Scottish Prison Service employed 4,586 staff and operated 17 penal establishments (including HMP Zeist) at a total cost of £250.6m. The average annual cost per prisoner place in 2000-01 was £28,114. The approximate cost of keeping an offender in prison for 6 months (£14,057) can be compared with £1,936 which was the estimated average cost of a probation order in 1990-2000 or £1,828 for a community service order.

Consideration of costs alone, of course, can say nothing about the relative effectiveness of custodial and non-custodial sentences in reducing re-offending. One way of assessing effectiveness, though not without its problems, is to examine reconviction rates. Several recent studies have suggested that community-based disposals such as probation or community service lead to lower (23% - 27%) reconviction rates than the use of custody.

The Association sees a number of benefits in increasing the pool of available sentencing options. However, the Association would caution that in considering alternatives to custody, a careful balance should be struck between the rights of offenders and the protection of society and communities. The imposition of a non-custodial part sentence should never be financially driven – it should be driven by the desire to find the appropriate disposal for the case at hand.

Of specific concern to the Association would be the supervision of prisoners released on licence and whether that role would fall on the police or the local authority. Police forces currently monitor Curfew Orders which to do properly involves an enormous amount of time and use of resources. It would not be possible for forces to redeploy resources from the front line to yet another duty which has been placed upon us.

In relation to Part 3 of the Bill regarding the licensing and regulation of knife dealers, the Association supports the general provisions contained therein. Any legislation which attempts to control the sale of such items is to be applauded. However there are so many other ways in which knives, swords and other lethal weapons could be obtained, such as the internet or through mail order.

The Association would like to have seen specific conditions contained within the Bill in respect of the Knife Dealer's Licence. Exactly what will the records maintained by the dealer actually record, i.e. age of purchaser, address, reason for purchase, identification produced etc. The Association would also wish to know what checks would be carried out prior to issuing a licence and would police forces be allowed to comment on eligability.

Chief Superintendent Clive Murray, President of the Association of Scottish Police Superintendents, will be attending the meeting of the Justice 2 Committee on Tuesday 7 November 2006 where he will give evidence. I trust these comments are of assistance to you and if the Association can be of any further assistance, please do not hesitate to contact us at the address listed.

SUBMISSION FROM VIOLENCE REDUCTION UNIT, STRATHCLYDE POLICE

The proposal for the licensing of the sale of swords and knives is fully supported by the Violence Reduction Unit. Clearly many retailers will be unhappy about such a move but the problem of knife carrying and associated violence in Scotland is so acute that any legitimate objection against licensing must be weighed against the potential benefits of such a scheme. There is a need to limit the immediacy of access to such weapons and to place a barrier between those who wish to use such a weapon and the commission of such heinous acts.

The use of knives is neither a new or increasing problem in Scotland and in particular the West of Scotland. Over a 10-year period (1993-2002), there were 885 murders in Scotland, 669 of which were in Strathclyde, out of which approximately 50% were committed with a bladed weapon.

The use of knives is maybe historically linked to Glasgow and the West Coast, the knife is also one of the most common weapons currently used across the whole of Scotland, with the frequency of use dependent on the seriousness of the assault. For example, Tayside Police report that 45% of attempted murders, 12 % serious assaults where committed with a knife, whereas, Lothian & Borders report 31% for murder, 33% for attempted murder and 9.5% for Serious Assault. The pattern for the rest of the force areas is similar with knives being less common in less serious incidents.

Unlike a firearms assault, the seriousness of a knife injury is sometimes completely random and is influenced by many other situational factors such as availability of emergency services, speed of response, did the knife cut a major artery or organ. Even the most innocuous stab wounds with a blade less than 3 inches can be life threatening. Considering the random nature of knife assault, then the murder figure in Scotland could be significantly higher.

A recent study of knives recovered within Strathclyde (Violence Reduction Unit) indicates that the most common weapon is the 'lock knife'. If this is extrapolated it would then suggest that this knife is the most common used in assaults, attempted murders and murders, challenging the stereotype that the knife mainly comes from the kitchen drawer. The fixed blade knife is next most common, which includes the kitchen knife, however, this group also contains a variety of other knives including hunting and the *'Rambo'* style blade. Detailed examination of the knife type indicated that 77% of all knives either used in an assault or apprehended in a search were non-domestic in origin.[1]

The behaviour displayed with the knife may have a resultant effect on the type of knife carried (and vice versa), with locking knives being kept most usually in the carriers underwear, whereas, it is unlikely that fixed blade knives would be secreted in the same area (for personal safety reasons). Alternatively, kitchen knives may be predominantly used in domestic attacks and larger ceremonial knives/swords may just be primarily for intimidation purposes.

Where the knives are being sourced is important. There is some evidence to suggest that some are still being sourced in the home (primarily fixed blade) weapons. This is indicative of the availability of that type of weaponry in the family home. However, the more common lock knife is not being sourced from the home. Intelligence suggests that these are being sourced through shops and other outlets (not necessarily major retailers). Licensing retailers and applying appropriate proportionate condition will help to stem the number of knives available on the street.

Any person who seeks a licence to sell non- domestic knives should be a fit and proper person with no convictions for crimes of dishonesty or violence. Identity must be sought from customers seeking to purchase non-domestic knifes and a record of said individuals should be kept. It is the opinion of the Violence Reduction Unit that non-domestic weapons must be stored in a secure way and not be openly displayed in shop windows.

Although swords may primarily be used for intimidation and show there have been a number more serious incidents involving a sword including 5 murders, 41 attempted murders and 196 serious assaults since 2000. In the last year alone there has been 10 attempted murders and 48 serious assaults where the primary weapon is a sword. (Strathclyde figures only).[2]

It is the opinion of the VRU that the swords used in such attacks and threats are low-grade imitations such as the £30 set of three samurai swords. It is unlikely that the attacks would be carried out using a genuine samurai sword at a cost of thousands of pounds. Legislating for swords based on there relative merits such as quality and price would be difficult and even more difficult to police. It is therefore, the opinion of the Violence Reduction Unit that any such legislation should make provision for those with a genuine need to purchase said items such as sporting use or members of historical societies.

Legislating and licensing alone will not make a sustained substantial difference to the level of serious violence within Scotland. Tackling the problem will require societal change and work is

[1] 05/7/04-04/7/05
[2] 27/10/2005-26/10/2006

ongoing in the long-term to achieve such ambitious goals, however by limiting the access to both swords and knives and decreasing the opportunity that these weapons are used in the commission of violence it will save lives.

SUBMISSION FROM PRISON OFFICERS ASSOCIATION

The POA have been invited to give evidence to the Justice 2 committee of the Scottish Parliament on the above bill. We thank the committee and welcome the opportunity to do so.

In doing so we must first make our position clear on this Union commenting on sentencing policy. We have always in the past steadfastly refused to become involved in commenting on this area of the Criminal Justice System primarily because of our apolitical stance on these areas and also the fact that our membership in the main are Civil Servants whose role it is to implement Government policy without fear or favour.

It would therefore seem appropriate that we try to curtail our comments to the potential impact of the proposals on both the staff and the service itself.

Having read through the proposals it seems clear that the move from what is considered by most practitioners to be automatic 50% remission at present to a situation whereby Sheriffs and Judges can in some circumstances determine that an individual must serve 75% of the sentence in Prison custody will place an additional burden on already strained and overcrowded Prisons. The consultation itself seems to already recognize that there is little or no information available regarding those prisoners who have at present been released having served 50% of the sentence reoffending and being returned to serve the remaining 50% of their sentence. If as proposed there is greater scrutiny of a prisoner's time in the non custodial part of their sentence and they are made to return to serve the remaining part this again will place further pressures on overcrowding. We are not at this juncture advocating against merely point out the further pressures on a system which currently houses the highest prison population yet experienced.

Turning to the proposal that sentences of 15 days or less should be served wholly in custody. It is difficult to try and understand what exactly the prison service is to do with these people other than to keep them in secure custody and whilst this is one of the primary aims of the service it is also incumbent on us to try to address offending behaviour. A sentence of 15 days or less does no more than allow us to warehouse prisoners who in the main given the level of sentencing will have committed a minor misdemeanour which would call into question whether prison was the most appropriate response or if some other alternative to prison should have been considered prior to sentencing.

The role of the Parole Board in the bill causes concern, certainly not over their competency in the ability to implement the new proposals, more so in the logistics of administering the new proposals in what we perhaps wrongly perceive as a substantial increase in work load without it would appear a substantial increase in resources.

In summary, the proposals in our opinion have far reaching resource implications for a service that for the last five years has been subjected to a flat line budget on running costs which to date has seen us shed in the region of 700 operational prison officer jobs. This has been required to meet the needs of 5% savings year on year to take into account annual inflation and any negotiated increase in staff salaries and as far as this Union is concerned is a situation that is no longer sustainable. The implications in the Bill are such that there would be a considerable increase in the administration work required to be done by Prison Officers in providing the parole board with reports on more prisoners than has been required in the past and that the estimates by the Prison Service of an additional 18 to 19 staff per 1000 prisoners at a cost of £5-6million a year seems in our opinion very conservative.

We hope these brief written comments and short summary are helpful to the committee and are ones that we can hopefully elaborate or expand on during oral examination

Weapons

It would not be our intention to comment in any great depth on the proposals to license non domestic knives and swords. However, given that it is an integral part of the Executive's strategy to combat knife crime we thought it incumbent on ourselves to draw to the committee's attention what we believe to be a serious anomaly in the current situation.

As it stands just now it is a crime to carry certain types of knives in public and anyone caught will be subject to prosecution. The anomaly exists in that a prisoner caught within the confines of a Prison is not subject to the same provisions and as far as our preliminary investigations can find out neither the police nor procurators fiscal are in a position to do anything about it under what we believe to be the wrong assumption that Prisons are not public places. This perception in our opinion is at complete odds with the Scottish Executive's smoking bill which quite clearly has designated Prisons for the purposes of the act public places. Whilst we appreciate that this current bill under consideration might not be able to address the problem we believe that it is of such a serious nature that it has be addressed as a matter of some urgency not only that it seems so wrong in principle but that it would appear to be in conflict with the Executive's campaign on zero tolerance to assaults on public sector workers.

Again if the committee feels that we can assist with anymore information during oral evidence then we are happy to do so.

Scottish Parliament

Justice 2 Committee

Tuesday 7 November 2006

[THE CONVENER *opened the meeting at 14:13*]

Custodial Sentences and Weapons (Scotland) Bill: Stage 1

14:14

The Convener: Item 2 is our second evidence-taking session on the Custodial Sentences and Weapons (Scotland) Bill at stage 1. I welcome from the Scottish Parliament information centre Graham Ross and Frazer McCallum, who have come along to assist us, and Susan Wiltshire, who is one of the committee's advisers on the bill.

I also welcome our first panel: Alan Baird, convener of the criminal justice standing committee of the Association of Directors of Social Work; Lindsay Macgregor, a policy manager with the Convention of Scottish Local Authorities; and, also from COSLA, Councillor Eric Jackson.

I will start the questions. The bill provides for Scottish ministers—which boils down to the Scottish Prison Service in this instance—and local authorities to establish joint arrangements for the assessment and management of the risks that are posed by all custody and community prisoners. What discussions, if any, have taken place regarding those joint working arrangements? Are you able to provide any detail on how the new arrangements will work in practice and what improvements they will bring?

Alan Baird (Association of Directors of Social Work): The speed with which the legislative process has moved has made it difficult for us to have any detailed discussions with colleagues from the Scottish Prison Service. It is important that we strengthen the emerging relationships between local authority social work departments and the Scottish Prison Service in relation to the Management of Offenders etc (Scotland) Act 2005.

Social workers have a long history of working in prisons. Prison social work has been a feature for many years, and we need to strengthen its position if we are to undertake successfully what will amount to a very considerable increase in the number of people who social workers and their Prison Service colleagues will be expected to assess.

The Convener: From what you have said, I assume that you are going to set up a working arrangement with the Scottish Prison Service to deal with the bill. Can you highlight to the committee any action that you are taking in that regard?

Alan Baird: We have on-going dialogue with the Scottish Prison Service. Councillor Jackson is a member of the SPS board—that has been particularly helpful as we move towards the new

arrangements. The detailed discussions will very much depend on establishing exact roles and responsibilities relative to the risk of harm posed by offenders who are serving sentences of less than four years but more than 15 days. We in social work must be very careful to use our resources in a way that is proportionate to the level of risk of harm that individuals pose.

An implementation group has been doing some work in relation to the bill. The Scottish Prison Service and the ADSW, through me, are involved with the various streams that go from court to custody to the community. The main discussions, which have already started, will take place in that group, which will be chaired by the Scottish Executive.

Councillor Eric Jackson (Convention of Scottish Local Authorities): I am a recent addition to the work of the Scottish Prison Service, where my influence has been limited to date. It sends out a wonderful message that the Prison Service has embraced someone joining its board from a local authority background. It clearly wants to build bridges.

We must always bear in mind the locus of the new community justice authorities and the focus to the discussion that they will bring. I will attend an SPS board meeting tomorrow, to which local authority conveners have been invited. The SPS has created liaison officer posts for all the CJAs. Those posts have now been taken up, which will assist greatly in the process.

The Convener: Given Mr Baird's opening comment about the speed of the legislative process, the committee would welcome short, focused written communications to keep us in touch with the joint work as it progresses. The work is obviously at an early stage.

Alan Baird: I am happy to provide briefings to update the committee.

The Convener: That is excellent. Thank you.

Under the new arrangements, how much input will local authorities and social work services have to the risk management process while offenders are in custody? How will that input vary between different categories of offender?

Councillor Jackson: It is essential that local authorities, the ADSW and the SPS work together throughout the process. It is not as if, while somebody is a prisoner with the SPS, they should not have access to social workers, and the process should flow from their time in prison to when they come out of prison.

Alan Baird: I agree. It is an enormous challenge to sort out exactly where priority should be given. It is clear that the bill gives top priority to those who are likely to cause serious harm and to be serving longer sentences. However, a word of caution is required. Those who serve short sentences might not have been imprisoned for violent offences, but their past might suggest that there is a risk of their causing harm, so we cannot afford not to be involved in assessing the risk that they represent. Given the nature of human behaviour, there is every possibility that even those who have been assessed as low risk and are serving short sentences could go on to commit fairly serious offences.

The Convener: Are you suggesting that all records on the individual should be considered during your assessment?

Alan Baird: We must consider all the records. My worry is that, collectively, we will miss something in the risk assessment process, and I am concerned about how we can consider all the records, given the sheer volume of prisoners on whom we will carry out assessments and make recommendations.

Mr Kenny MacAskill (Lothians) (SNP): The committee understands that an extra £500,000 will be allocated for social work input to the integrated case management system. Given the increased number of offenders to be assessed, is that sum adequate?

Alan Baird: From the ADSW's point of view, the overall cost is more likely to be around £12.5 million; whereas the figure of £7.45 million is given in the financial memorandum.

We take a tiered approach and put the greatest amount of work and supervision into those who pose the highest risk. However, questions arise about how we reduce reoffending. There needs to be a strong connection between the bill and the Management of Offenders etc (Scotland) Act 2005. If we have prisoners who are serving between 15 days and six months, we will continue to have a revolving door, and we propose that a considerable sum of money should be spent to try to break the cycle and reduce reoffending in the community. If we do not do that, prison numbers will rise considerably, as you heard from Rachel Gwyon, who said that the proposals will add 700 to 1,100 extra prisoners to the daily prison population.

We are trying to consider the whole system—from prisoners who serve 15 days right up to those who serve four years. How much money do we need to provide not only the proper risk assessments but the appropriate level of supervision that is proportionate to the risk of harm?

Councillor Jackson: There are two types of risk that we must take into account. The first is the risk of harm, and the second is the risk of reoffending. If we are to make a difference to the

revolving-door problem to which Alan Baird referred, we must look seriously at the risk of reoffending.

Mr MacAskill: The Executive hopes that the new arrangements under which all offenders who serve a sentence of 15 days or more will be subject to some form of restriction in the community will help to address the problem of reoffending. Is there any evidence that offenders who have been subject to community intervention after a period in custody are less likely to reoffend than those who do not receive any intervention?

Councillor Jackson: Alan Baird will say whether there is concrete evidence of that. The experience of professionals who work in the area, including the experience of most of the Scottish Prison Service, suggests that programmes that are delivered for short-term prisoners do not work—they are not particularly effective. The same programmes delivered in the community would have far more chance of success. That reflects the artificiality of short-term sentences. When people who have been in prison for only a few weeks or a couple of months come out, they want to forget about that period in their lives and everything associated with it. If programmes were delivered in the community, they would have far more meaning to people.

Mr MacAskill: Is there any empirical evidence to which Alan Baird could refer us, either today or in a written submission?

Alan Baird: There are statistics available. I do not want to quote them wrongly this afternoon, but I am happy to try to provide them for the committee. Are members seeking evidence on the difference between the reconviction rates of those who have served a custodial sentence and those who have been subject to some form of supervision?

Mr MacAskill: We are seeking evidence on the difference between the reconviction rates of those who served a custodial sentence, followed by some community intervention, and those who have merely served a custodial sentence.

Alan Baird: I am happy to provide the committee with that information.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I thank COSLA and the Association of Directors of Social Work for their joint submission, which I have found useful.

The bill provides for all offenders with a combined sentence of six months or more to have a supervision condition attached to their licence, once they are released. The Executive has estimated that that will result in an additional 3,700 offenders becoming eligible to receive some form of supervision on release. That is slightly different from the figure that you have provided, but not enough to argue over. How much of an impact will the bill have on resources for criminal justice social work services? Is it possible that any positive effects of supervision may be diluted by the increase in the number of those who require supervision?

Councillor Jackson: It is early days and we are still working on costings. We need to be realistic about costings and to have a robust system for estimating them. There is also an issue of capacity. All members of the committee will be aware of the difficulty that we have had in previous years in getting enough social workers.

Alan Baird: It is particularly important that we use scarce resources—in this case, qualified social workers—to greatest effect. Our written evidence highlights the importance of having a paraprofessional grade. "Changing Lives: Report of the 21st Century Social Work Review" emphasised the need to train staff not to the level of qualified social workers but so that they can work with lower-level offenders. Criminal justice social work has a good history with Scottish vocational qualifications and criminal justice assistants. A number of lower-level offenders need to be directed to a range of services, and it is important that those services are available when they are needed. That will allow qualified social workers to work at what we describe as tier 3—with offenders who pose the highest risk of harm to the community.

14:30

The Convener: How many new staff will you need and how quickly will you be able to put them on the park? After all, if the legislation is passed, it will not be that long before it is implemented.

Alan Baird: First, I should point out that yesterday's headline in *The Herald*, which said that 500 new staff would be needed, somewhat misrepresented our position. We think that 100 new staff will be needed, although not all of them will necessarily have to be qualified social workers. However, we still need to break down that figure between qualified social workers and the paraprofessionals I was talking about. If the need is for qualified social workers, we will have a bit of a problem, because we do not have great numbers of them around at the moment.

The Convener: How long will it take to train up brand new social workers?

Alan Baird: Prospective social workers need to undertake the four-year honours degree course, which was started up only last year. We would certainly need to increase the number of those taking such courses.

The Convener: I am sorry to push you, but surely if this four-year degree course was introduced only last year, people on it will not be available for employment for another two or three years.

Alan Baird: Before the course was introduced, we had a fast-track system and the social work diploma. We are now moving from the diploma to the degree. Although people are still coming through the system, they are not coming through at the rate that will be required if the bill is passed and its provisions implemented next year.

Councillor Jackson: That is why it is important for us to quantify those who need the direct intervention of a qualified social worker and those who can be handled under the supervision of qualified social workers. We need to clarify the term "supervision", because it can cover, at the bottom end, signposting and brokerage and, at the top end, one-to-one sessions with those who pose the most risk.

Colin Fox (Lothians) (SSP): I am struck by the figures, which suggest that an additional 3,700 or 3,800 cases will need to be supervised. In your submission, you say that at the moment criminal justice social work in Scotland supervises 600 offenders. Surely that leap from 600 to 3,800 is a bit stark.

Alan Baird: Of course, the 600 figure refers to those serving four years or more who would be released on some form of licensed parole. The 3,700 figure refers to the number of people serving sentences of from six months to four years. You are right to say that it represents a massive increase in the work that we will be required to carry out.

Colin Fox: So the 3,700 will be additional to the 600 offenders who are supervised at the moment.

Alan Baird: Absolutely.

Colin Fox: I am not really interested in whether 100 or 500 new staff will be needed to implement the bill, because the convener has already touched on the time lag between the bill's implementation and new social workers coming into the system. Can you outline the difference between paraprofessionals and criminal justice social workers?

Alan Baird: A paraprofessional does not have a social work qualification, but is trained in key areas. For example, certain people employed in the Scottish Ambulance Service or the legal profession are able to undertake a variety of duties and responsibilities, but not those set out in the Social Work (Scotland) Act 1968. Although they play a supportive role, they are also able to work independently in some situations with the support and under the supervision of qualified staff such as senior social workers.

Colin Fox: Would a paraprofessional be able to intervene in situations or supervise offenders, or do such jobs require four years' training?

Alan Baird: They are able to take on brokerage duties and certain low-level jobs that might be termed welfare work. For example, they might deal with some of the chaos surrounding the housing, debt and poverty issues that mark offenders' lives and underpin offending behaviour. Such issues need to be sorted out before the offending behaviour can be dealt with directly. Paraprofessionals might work independently, but they might also work alongside qualified colleagues.

The Convener: As the people who are on the front line, how appropriate do you think it is for unqualified staff to supervise released prisoners? I presume that the proposal comes from the Executive.

Alan Baird: They would not be unqualified; they would be partly qualified. We have to link that back to the earlier points on risk assessment. It is only once we have done a risk assessment that we can determine what work needs to be undertaken with or by any individual. Until such assessments are undertaken, I will not be sure what the figures will be or how we should respond to any one individual.

Cathie Craigie: I am interested in that part of the evidence and that the ADSW is willing to take that work forward. Many people out there in the voluntary sector are doing the job without qualifications. Formal training would be welcome.

In answer to my previous question, Councillor Jackson referred to capacity and said that resources will have to be used to best effect. Will you outline for the committee the different methods of community supervision of offenders? Will you expand further on what changes would be required to take account of the proposals in the bill?

Councillor Jackson: We have been talking about social workers and local authorities, but the voluntary sector has a significant role to play, although work by that sector would be commissioned through local authorities and through the newly formed community justice authorities. There are people in the voluntary sector who are delivering services for us at the moment—we see an expanded role for them.

Alan Baird: I am not sure exactly what information Cathy Craigie is looking for.

Cathie Craigie: In appendix 1 of your briefing, you provided a list of the different tiers of support. Will you paint a picture of that for the committee, so that we can understand more about what is available at the moment and how that might change to take account of the legislation?

Alan Baird: It all starts with a social inquiry report. Such reports take up considerable time—perhaps more time than colleagues and I would like them to. We are not sure what the impact on social inquiry reports might be in relation to sheriffs making recommendations on the custodial part of a sentence, which can be between 50 per cent and 75 per cent of the total. That should be borne in mind.

A lot of work is being done on community disposals, community service, probation and the developing through-care scene. Through-care is being done jointly with the Scottish Prison Service and, as Councillor Jackson said, colleagues in the voluntary sector, to prepare people for release from long-term sentences. We must ensure that, under the bill, we are in a position to offer offenders a wide range of services linked to local need.

I am concerned that we might end up doing more breach reports for the Parole Board for Scotland because people end up going back into the prison system—my worry is that that will deflect us from dealing with the needs of offenders.

We have touched on the volume aspect, which is of great concern to me and colleagues. More people will be working in the prisons, but there will also be more in the community too. My concern is that we could dilute some of the services if the changes are not resourced properly. By diluting them, we increase the likelihood of reoffending and of offenders causing harm. Does that answer your question?

Cathie Craigie: That is fine.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Reference has been made to the issue of the revolving door. The documents accompanying the bill state that social work practice shows that services that are provided in the community for less than three months are not effective in reducing reoffending behaviour. Given that the bill, in its current form, will not change that situation for half the prison population, do you believe that there are any measures in the bill that will actually reduce reoffending?

Alan Baird: I do not believe that the bill will have an impact in relation to short-term sentences. By and large, if we want to make an impact, we would be better to take those currently serving short-term sentences—a massive number of people—out of the prison system and work with them in what are known as community link centres, where we can bring together key professionals in an effort to reduce reoffending. I do not see reducing reoffending as a key part of the bill; that is not where its emphasis lies. What I am trying to do is connect the bill with the agenda for reducing reoffending—the target is a 2 per cent reduction by 2008—and to consider what contribution social work can make to helping Scotland become a safer community.

Jeremy Purvis: Does COSLA have a view on that?

Councillor Jackson: While the bill might not specifically have such an impact, I am looking at it in the context of everything else that is going on in the criminal justice field and the efforts that are being made to reduce reoffending. The widely held view on short-term sentences is that a lot of the people who are serving such sentences could be better served—for their own sake and as far as the community is concerned—by having a non-prison disposal. That is not to say that there should be an end to short sentences, because there must be some capacity to deal with those people who just will not take the opportunity that is offered to them. However, there is a widely held belief among my colleagues that we could do far more for people on short-term sentences and that we could relieve some of the pressure that is on the Scottish Prison Service to deal with the higher end of risk management.

Jeremy Purvis: From the point of view of COSLA and the ADSW, how credible is the proposition that individuals can at least, while they are in prison—even for a short sentence—be signposted to services in the community, so that they could start a number of programmes at that stage?

Alan Baird: That is happening to some extent at the moment, through the transitional arrangements, particularly in relation to drugs in prison. Attempts are being made to establish a stronger connection for short-term prisoners during their sentences and to help them to find their way to appropriate resources, bringing continuity to those services both in the prison and in the community. However, those efforts are limited to substance abuse only.

A range of other issues, such as mental health, homelessness, poverty and dysfunctional families, could be dealt with much more effectively if we held on to people within the community. The disruption caused between the community and prison makes it difficult to do much more than signpost the right service. As Councillor Jackson said earlier, the voluntary sector could do a lot more to build services around individuals. There is evidence of that in Edinburgh through the community link centres, but I do not think that it happens enough at the moment.

14:45

Councillor Jackson: The point is that work is going on. We have social workers in prison, and

either housing officers visit people in prison or prisoners are allowed out to visit housing officers before they are released. There is a level of continuity at the moment; we just need to boost it.

Jeremy Purvis: I want to be clear about the combined position of COSLA and the ADSW, especially in relation to paragraph 6 of the joint submission. Is it your view that part of the increased expenditure attached to the bill would be more effectively spent on services in the community if there was an end to short-term sentences? As I said before, 48 per cent of the average daily prison population are serving sentences of less than three months, so we could use that period as a definition of short-term sentences.

Councillor Jackson: I do not think that we would tie the idea to money that might come with the bill, but that is our combined position. I represent a range of views, so some people will not subscribe to what I am saying. However, the majority view is that it is more cost effective to handle many people in the community rather than in prison, because of prison costs and the lack of effect that some of the programmes delivered with short-term sentences have.

Alan Baird: I agree with Councillor Jackson.

Jeremy Purvis: On the period of time, I gave the example of three months. Is your view that, other than last-resort sentences for persistent low-level offenders, there should be a phasing out of sentences of less than three months?

Councillor Jackson: The majority view is that people given short-term sentences could be better served by community disposals.

Jeremy Purvis: Is that the same for the ADSW?

Alan Baird: Yes.

Jeremy Purvis: I want to move on to licence conditions being breached. Do you envisage a situation under the bill in which more offenders are returned to custody for breach of licence? In your evidence, you indicated some alternatives to returning to custody for breach of licence. What are they?

Alan Baird: I want first to pick up on short-term sentences, which are linked. Clearly, a high breach rate is likely with short-term sentences. The criteria mention being of good behaviour for up to six months. I guess that we should all be of good behaviour, and because someone is subject to licence it does not mean that they should be any different from those of us sitting around the room today.

On the wider point, which part of the submission are you referring to?

Jeremy Purvis: Forgive me for not having the paragraph to hand. I thought that I read that you were looking at alternatives to returning to custody for breach of licence—you might be able to help me out.

It is paragraph 7—the paragraph following the one I mentioned earlier—of the ADSW and COSLA joint submission, which states:

"There are questions around whether breach always warrants custody."

Councillor Jackson: We have arrived at the same issue. Should people who breach automatically be put back in prison, or could another disposal take into account the fact that they have breached their conditions without there being a need for them to go back into custody? We have not thought through to the nth degree what that would mean, but we can come back to you.

Jeremy Purvis: That would be welcome.

I have a brief question that follows on from Mr Baird's comment about the social inquiry report. The committee may itself consider the issue, but can you tell us in what proportion of cases a social inquiry report is asked for when sentences are given in courts?

Alan Baird: The proportion is likely to be high when prison is being considered, but I do not have the figures in front of me. The number of social inquiry reports has risen considerably over the past few years. Sheriffs like them for many different reasons, for example they give good background information and options for sentencing. I wonder—this is only a thought—whether they will look more to social workers to help them to make recommendations on the percentage of a sentence that is to be served in custody.

Jeremy Purvis: Or indeed for recommendations on some of the conditions that should apply.

Alan Baird: Yes.

Jeremy Purvis: But that would not necessarily be a negative thing. If we put aside the resources issue for a moment, as a point of principle it would be a positive step towards good practice.

Alan Baird: You must take account of the number of social inquiry reports that are currently being produced and whether the figure is already higher than it should be. I would like it to be reduced, which might give us more capacity if sheriffs want to seek recommendations or the views of social work staff on whether the custodial part should make up 50 per cent or 75 per cent of the sentence.

Maureen Macmillan (Highlands and Islands) (Lab): I will go back to risk assessment and ask

you to clear up a point for me. Perhaps you clarified it in your oral evidence, but if you did I did not pick up on it.

Paragraph 11 of the ADSW and COSLA joint submission states:

"This joint process of risk assessment between Scottish Prison Service and local authority Social Workers raises difficulties related to the contract culture within SPS which would benefit from consideration."

Can you tell us about that contract culture?

Alan Baird: From my perspective, the contract culture has been very much part of the way in which the SPS has operated for many years. Currently, the SPS has a contract with each local authority in whose area a prison is situated. In the past, that has caused some difficulty in relation to the extent to which we are able to meet, with the resources that are available, the obligations that attach to the contracts. I would like a discussion to open up on the best way to provide social work services in prisons, particularly given the increased level of joint working that we have talked about today and which should happen under the 2005 act. There is a duty to co-operate. I would like to see a performance framework that covers expectations of both statutory and non-statutory work within prisons. There is now an opportunity, which has not existed in the past, to have a dialogue.

Maureen Macmillan: That is helpful.

I want to ask you about the role of the voluntary sector in more detail. I know from the committee's youth justice inquiry that the voluntary sector plays a huge part in delivering youth justice services. There is a lot of expertise in the voluntary sector. I know that there is expertise in the area that we are talking about now. Organisations such as Sacro and Apex Scotland operate programmes in prisons and also do work on the outside.

The Executive has said that it expects that local authorities might commission voluntary organisations to deliver all or part of the supervision aspects of an offender's licence. How much do local authorities rely on the voluntary sector? What is the policy on voluntary sector engagement?

Councillor Jackson: Local authorities rely on the voluntary sector significantly, but capacity issues will exist in the voluntary sector. One reason for establishing the criminal justice authorities—I mean community justice authorities; I make that mistake sometimes—was to bring people together to thrash out such issues. The voluntary sector will have a significant role, but we need to talk to it about its capacity to deliver. Given that the CJAs are still in their relative infancy, those discussions continue.

Maureen Macmillan: How much do you propose to involve the voluntary sector? One complaint from the voluntary sector about youth justice was that it was never involved in strategic planning or making strategic decisions—it was always brought in at the last minute. Will the voluntary sector have more of a strategic role?

Alan Baird: The situation has already changed—the community justice authorities have changed that. I am a member of a scrutiny panel that met last week to consider area management plans. Two members of the five-person panel were from the voluntary sector. It was clear from the management plans that the sector plays an increasingly important and vital role in the development of services, which will strengthen in coming years.

Maureen Macmillan: Which voluntary organisations are likely to be partners? I know about Sacro and Apex Scotland. Are there others?

Alan Baird: NCH has a good track record of working with offenders and my authority, Dundee City Council, has been an integral part of group work for offenders for some time. Victim Support Scotland is a major player in dealing with victims and that role is strengthening. I am sure that David McKenna, the organisation's chief executive, will be happy that I have made those comments. It is important to note that several smaller, local voluntary organisations are vital to meeting local needs and have identified gaps. Locally and nationally, the voluntary sector will play a significant role.

Councillor Jackson: The issue for CJAs will be how we involve all those organisations. It is fairly easy to bring on board bigger organisations, but we must ensure that smaller, local organisations feel that they are part of the scheme that we are operating and the new world that we face.

Maureen Macmillan: I presume that you are considering service level agreements and so on locally. How does that fit in with what you said about qualified social workers and paraprofessionals? I am aware that although many voluntary organisations employ qualified social workers, many have people who are not qualified social workers but who have deep expertise in a narrow band. I presume that you would recognise such expertise.

Alan Baird: Absolutely. In some respects, that is no different from the situation in criminal justice services in local authorities, which have a mixed bag of people who are qualified in social work and people who are qualified in other areas but who have commitment, passion and great experience. All those aspects need to be harnessed to provide the right services to individuals in the community.

Maureen Macmillan: However, you are still anxious that the voluntary sector does not have enough capacity.

Alan Baird: The increase in numbers that we have talked about means that it is a challenge for us all to ensure that we find the right resources and train people in the required way. Unfortunately, I do not have an answer to all that this afternoon.

Maureen Macmillan: Thank you. That is helpful.

Councillor Jackson: The aim is to build capacity in the community.

The Convener: Representatives of the voluntary sector will give evidence next week.

Cathie Craigie: Community justice authorities have been mentioned. They are in their infancy. Are they ready to take on the additional work that will be generated if the bill is enacted?

15:00

Councillor Jackson: They are in their shadow year at the moment, and will go live in April. It is fair to say that some authorities are further ahead than others. We have to ensure that we share best practice and the experiences of the authorities that are further ahead.

The Convener: We turn now to weapons. I am conscious of the time, but a lot of vital evidence is emerging this afternoon.

Jackie Baillie (Dumbarton) (Lab): I will be swift, convener.

In its response to the Executive's consultation, COSLA suggested that anyone who really wanted to purchase a knife would find a way around the licensing restrictions. A number of business activities are already covered by licensing schemes. Why do you think that a licensing scheme for knife dealers would not be a useful step forward?

Councillor Jackson: Lindsay Macgregor has more expertise than I do in this area.

Lindsay Macgregor (Convention of Scottish Local Authorities): In itself, the bill will not reduce knife crime, but COSLA believes that it will send out the right messages and that it will be a useful part of a bigger jigsaw.

We are not saying that everybody will automatically divert their purchasing power, but we will have to keep an eye on the situation. The police will have to monitor it closely over the next few years to see whether the locus for sales shifts to internet mail order, for example, or whether the cutting off of local sources reduces knife crime—as we hope it will. COSLA welcomes the bill, but it must be part of a much bigger picture of measures to address knife crime.

Jackie Baillie: Does COSLA foresee any problems in enforcing the proposed licensing scheme?

Lindsay Macgregor: Not particularly; not in most places. The extent of knife crime is surprising, even in small towns. It is not just an urban issue. However, trading standards officers and other officers in local authorities already have pretty good relations with their business communities, and they know the kind of places that will be licensed, therefore licensing will not be a major issue. However, some little points might have to be ironed out and the definitions will have to be clear. There might be a burden on second-hand dealers that pay other licence fees. How can we ensure that people go along with the scheme voluntarily rather than having to be forced to do so?

In our written submission, we point out the resource issues for local authorities. Pieces of legislation such as the bill are important, but they are not necessarily accompanied by resources that allow there to be a single dedicated post in each local authority. The work might take up one eighth or one twentieth of somebody's time. There will be fees, but we have to ensure that they cover such costs. With more and more small pieces of legislation, the costs accumulate, and can amount to a greater burden on local authorities.

We have warned you about those kinds of issues. We have also pointed out one or two matters that might have to be explored further. How will the legislation be enforced when people sell swords, for example, at sports events? How can we ensure that local licensing arrangements are not a burden on local enterprises that will be captured by the licensing regime? One or two anomalies will have to be sorted out to ensure that the legislation can be fully implemented.

Jackie Baillie: That was a helpful response. No doubt we will come back to ironing those issues out.

One issue troubles me: the bill makes no distinction between a domestic knife and a non-domestic knife. Perhaps we do not need one, but I am not sure that some of the cleavers that I have seen in kitchens around Scotland would be regarded as domestic knives. Will the lack of a definition be confusing for retailers as they wonder whether they need to apply for a licence or not?

Councillor Jackson: It probably will be.

Jackie Baillie: Have you given any thought to a definition?

Lindsay Macgregor: We have not as yet. We can simply see that, without a definition, there may be difficulties in enforcing the legislation. We also recognise the pros and cons that are involved. Certainly, the proposal merits further discussion.

Jackie Baillie: Is it the place of the Executive to offer guidance to local authorities in this regard?

Lindsay Macgregor: Joint responsibility is probably involved, as trading standards officers and others bring a great deal of expertise to the area. They also know what makes sense in the context of their expertise.

Jackie Baillie: You spoke of anomalies in the conditions that are applied by authorities throughout Scotland. Obviously, the bill allows for the Scottish ministers to set minimum conditions by way of statutory instrument and for authorities to impose additional conditions. What conditions are likely to be applied to the licensing schemes that the local authorities will run? What additional conditions will authorities seek to impose?

Lindsay Macgregor: I cannot give a full answer to the question, but I can get further information for you. Depending on the circumstances, all sorts of things might be relevant, for example showing proof of age in the shop and applying local curfews to knife sales. Trading standards colleagues are best placed to provide further information on the matter.

Jackie Baillie: It would be helpful if we could receive that.

The Convener: It would be extremely helpful if the COSLA representatives would ask their trading standards colleagues to submit information to the clerks.

Councillor Jackson: We will do that.

The Convener: Thank you.

Maureen Macmillan: Further to Jackie Baillie's question, perhaps it would be an idea to require some sort of identification. I understand that some local authorities require the production of photographic ID when purchasing certain second-hand goods. Would it be a good idea to make that a licence condition for non-domestic knife purchases?

Lindsay Macgregor: Trading standards officers are considering that issue at the moment, alongside their consideration of due diligence factors, such as being clear about the purchaser's purpose and intent when buying an item. There are different ways of imposing conditions.

Maureen Macmillan: Instead of leaving the decision to individual local authorities, should the Scottish ministers impose the production of photographic ID as a standard licence condition?

Lindsay Macgregor: A balance has to be struck in terms of the additional burden that is placed on authorities. In some areas of Scotland, the requirement will be a fairly sensible one, whereas it will be less of an issue in other areas. In the latter areas, it could be seen as an additional burden for no good reason.

Colin Fox: I have two relatively straightforward questions. First, have you got to the point in your discussions where you have an idea of the charge that an authority will make for a knife dealer licence?

Lindsay Macgregor: I believe that it will be around £50.

Colin Fox: Why is it pitched in that way?

Lindsay Macgregor: That is the rate for a number of other similar licences. We need to strike a balance between the charge not being too burdensome and having some meaning. The thinking on the matter is not fully developed as yet.

Colin Fox: Secondly, was any consideration given to an alternative to a licensing scheme? I am thinking of something that would have the same impact on the availability of knives but that does not go down the licensing route.

Lindsay Macgregor: I have no idea whether the Scottish Executive has pursued any other line.

Colin Fox: Did COSLA come up with any alternatives in its deliberations?

Lindsay Macgregor: Hand in hand with the approach that is being taken on licensing, we are looking at the promotion and marketing of knife sales. We want to see whether anything more needs to be done alongside—but not instead of—the bill. There is room for us to carry on exploring the issue to see how we can maximise the impact of the scheme. The feeling is that knives can be inappropriately promoted and marketed. We want to see whether measures can be included in the bill—or implemented alongside the bill's provisions—to lower the image of knives, as that is part of the issue in terms of knife crime.

Colin Fox: As you say in your submission, in addition to clamping down on promotion, you want the bill to place

"a condition on dealers to display a notice stating the offences".

Lindsay Macgregor: Yes, absolutely. We want to raise awareness in general. The Scottish Executive and local authorities can work together on that.

Mr MacAskill: I am interested in the suggestion that the cost of a licence should be only £50, on the basis that it should not be too burdensome. Surely we want the cost to be burdensome so that a knife is not seen as simply another commodity? If some onus is to be placed on those who engage in the selling of knives, perhaps a significant cash requirement would be one way of filtering out those who are simply trying to make a fast buck.

Councillor Jackson: We need to balance that against the fact that some people sell knives for

specific purposes, such as to meet the needs of gamekeepers.

Lindsay Macgregor: Our starting point is that the majority of those who currently sell knives probably do so for reasons that are okay. However, the amount of bureaucracy involved in the licensing scheme might put off some retailers but not those who sell fishing knives and so on. We need to strike the right balance.

The Convener: I thank the panel for answering our questions this afternoon. We look forward to receiving the documents that were promised would be sent to the clerks. We will now arrange for the second panel of witnesses to sit at the table.

Good afternoon, gentlemen, and welcome to the next part of our evidence taking this afternoon. I welcome our second panel of witnesses: Superintendent William Manson and Detective Superintendent James Cameron, who are both from the Association of Chief Police Officers in Scotland; Chief Superintendent Clive Murray, who is the national president of the Association of Scottish Police Superintendents; and Detective Chief Superintendent John Carnochan and Will Linden, who are both from Strathclyde police's violence reduction unit.

I will start off the questioning. How do police forces in Scotland currently deal with breaches of licence and recall to custody? I will leave it to the witnesses to sort out who should answer that question. I know that they are all bursting with information.

Chief Superintendent Clive Murray (Association of Scottish Police Superintendents): The police approach can involve different ways of dealing with that, but it is fairly simple. If we arrest an offender whom it transpires is subject to licence arrangements, we notify the courts or social work and they then intervene. At the moment, it is not that much of a police function.

The Convener: In other words, recall to custody in not the province of the police, but the police will act on it.

Chief Superintendent Murray: We will act on it and detain the offender. If the offender is recalled to custody, we will facilitate the arrest from the individual's abode or wherever they are, and put them back into the criminal justice system.

The Convener: In other words, the police are not the lead on the recall.

Chief Superintendent Murray: That is correct.

15:15

The Convener: Can you give us an estimate of how much police time is spent on dealing with breaches of licence and recalls to custody?

Detective Superintendent James Cameron (Association of Chief Police Officers in Scotland): It is a small part of our business, but it occurs on a daily basis. It is difficult to quantify, because the people who figure in that process become part of the everyday warrants system, and we usually return them to prison as the result of a warrant being issued. It is difficult to quantify what percentage of our business that constitutes, but it is a daily event.

The Convener: What are the triggers for recall and how are the police called to deal with it?

Detective Superintendent Cameron: There are a number of triggers for recall, mostly through the social work support for individuals in the community. If someone breaches the terms of their licence or whatever order they are subject to, the supervising social worker reports back to the Parole Board for Scotland, asking for a recall to prison. If it is decided that a recall is required, a warrant is granted. There is also some form of recall to prison by the commission of a further offence, although that is less to do with the licensing arrangements at the moment.

The Convener: How long does it take from somebody being put into the system to the police being called in to recover them?

Detective Superintendent Cameron: That is difficult to quantify. It depends on the nature of the breach of licence for which they are being recalled. I understand that a report is submitted by the social worker to enable the Parole Board to make its decision. There is some concern about the length of time that that takes, but that is a matter for social work. It is not an instant process. The police react as soon as they can, once they have received the arrest warrant for the individual. It is more a question of the social work process.

The Convener: Do your organisations have a view on how that process works?

Detective Superintendent Cameron: Yes. The quicker it works, the better. If the process is about reducing reoffending, it needs to be speedy. In my view, people should quickly be recalled to courts to answer for the difficulties that they present to the community.

Mr MacAskill: I am conscious of the comments that you have made about quantifying time. The Executive estimates that the bill might result in an extra 8,600 offenders a year serving part of their sentence on licence, which could result in 1,290 being recalled. What impact would that have on police resources?

Detective Superintendent Cameron: It is not as simple as looking at the process of recalling individuals to prison. As you heard a moment ago from our social work colleagues, it is about the impact that the individuals have on crime and the level of risk in terms of reoffending and causing serious harm to the community. Anything that increases reoffending in the community will create extra work for the police and extra suffering for the community that has to deal with the outcomes of the process. It is not a matter of simply quantifying the time that it takes police officers to arrest individuals and take them back into the system; it is about the effect that the new system will have on offenders' living in the community.

Mr MacAskill: The Executive has also stated that allowing the police to return individuals to custody without needing to go through the courts will help to reduce reoffending. Although that may be the case in the short term, is it your experience that individuals who are returned to custody for breaching licence conditions ultimately desist from engaging in criminal activity?

Detective Superintendent Cameron: Clearly, there is a need, on occasions, for respite for the community, and the only way to provide that is to place offenders in custody. I was interested in the earlier question and response about three-month sentences. There is no simple equation, as such a sentence may be based on a course of conduct rather than an individual event. Although I might support the view that a three-month sentence is inappropriate, there is a lot more detail than the length of service to be looked into. That is another issue for us to address.

Chief Superintendent Murray: In relation to reoffending, we can be clear about one thing: when individuals are in prison, they do not reoffend. It should be no surprise that having record prison attendance has led to reduced levels of crime. Over recent periods, the police have been effective in detecting crime, which has led to more people being presented to the courts and being sent to prison. As a consequence of that, we have a reducing crime rate.

The Convener: We do not want to pry into police intelligence. However, while we are considering the bill, the local police forces will want to keep a watching brief on those individuals who, in their opinion, might be a risk. Is that something on which you will seek to input into our evidence taking over the next couple of weeks? I am talking about the role that you have or assume in the community when somebody is out on licence.

Chief Superintendent Murray: Our role in the community is fairly clear: we work with partners to make the best-informed decision on the risk that an individual presents. We have gone through the bill in some detail and we believe that there are areas in which further clarity is required about the police role in risk assessment, such as the input that will be required from the police in relation to information that is provided to the parole board and the information that will be required from the police in the context of a breach of community licence. Particularly in relation to sex offenders, we have built up a strong partnership with criminal justice social work and others in the criminal justice system in transferring relevant information so that the best decisions are made.

Mr MacAskill: What is your evidence for the statement that the reduction in some crime figures has been the result of imprisonment as opposed, for example, to there being fewer young males? Throughout the generations in our society—and, indeed, across societies—it is usually young males who perpetrate crime.

Chief Superintendent Murray: I cannot give you scientific information. Anecdotally, I can tell you that the feeling among senior police officers who are involved in day-to-day policing in the community is that, once the chronic recidivists are incarcerated, crime levels go down. There is plenty of information on that from on-going analysis in each of the communities—we call them police divisions—across Scotland. There are certain key offenders who commit crime far in excess of other offenders. Invariably, when those offenders are in the community, crime levels go up.

Mr MacAskill: How does the fact that we are locking up more of those people square with the increase in the levels of some of the most serious offences?

Chief Superintendent Murray: Can you repeat that, please?

Mr MacAskill: I do not follow your logic. Some of the more serious aspects of criminality are increasing—statistical evidence shows that they are on the up. How do you square increasing custodial sentences with the fact that the levels of some serious crimes are increasing? Surely, your logic would dictate that they would be coming down.

Chief Superintendent Murray: We regularly receive clear detail of the amount of crime that is going on in communities. From the information that we receive, we see a correlation between chronic recidivists—offenders who commit crime within communities regularly—being placed in prison and crime levels going down.

Detective Superintendent Cameron: The difficulty in making one law fit all is that there are those who fall outwith the distinct definitions. The recidivist is a fine example of that. The police are just waiting for certain individuals who are in

prison at the moment to come out of prison so that they can catch them and put them back in. That is the harsh reality. We must find a way of treating those people differently from individuals who are in prison for three months when they should not be there. That is the reality. We must take different steps rather than make one size fit all. The start of that process must be to assess an individual's risk when they are in prison, and it should extend to assessing their risk when they come out of prison and before they go in the next time. We need to join up the process a bit more and make it tailored to the individual, which I think it is intended to be.

Superintendent William Manson (Association of Chief Police Officers in Scotland): A distinction must be made between reoffending and the risk of harm to the community. All too often, we get wound up with the purely statistical nature of reoffending, whereas the risk of harm is much more important. The development of multi-agency public protection arrangements throughout Scotland as a result of the passing of the Management of Offenders etc (Scotland) Act 2005 will go some way towards assisting us to concentrate on the risk of harm as opposed to purely on statistics.

Jeremy Purvis: I want to develop that point. Sheriffs will have decided that some of the 48 per cent of all offenders who are serving prison sentences of less than three months are a danger to society, which is why they are in prison. I presume that those people will not stop being a danger to society once they are released into the community after five and a half weeks. In that context, the bill includes additional conditions on release that can be tailored to individuals.

Probably more than half of the submission from the Association of Scottish Police Superintendents consists of statistical analysis, which leads to one conclusion: imprisonment has not been the right approach for the large majority of those who are serving short-term prison sentences. What are the alternatives to that approach and under what circumstances should those alternatives be used? If there is no desire under any circumstances to abolish prison sentences of less than three months, what criteria should be used for imposing short-term prison sentences? I think that the ASPS submission mentions a number of benefits that would result from increasing the pool of available sentencing options. What are those options?

Detective Superintendent Cameron: We would probably agree that short sentencing does not work, but a short sentence can sometimes be the only means of respite for a community. That cannot be ignored. Sometimes there will be respite for a community only when a person is put in prison. That is why we must tailor measures to individuals rather than take a collective view—otherwise, individuals will be missed and will slip through the system and continue to commit crimes. The issue is not the harm that is caused by individual crimes that are committed, but the cumulative harm that people will cause over the period during which they are outside the prison regime. We must concentrate on that.

Jeremy Purvis: I asked specifically about the circumstances under which people should receive prison sentences of less than three months. I want to be clear. Let us consider an individual with four convictions for assault or an individual with five antisocial behaviour orders who is a real nuisance. Would a custodial sentencing option be taken purely so that such people will be out of the community and the community will therefore have relief for five weeks before the person returns to it? The same pattern recurs time and again. What is the alternative to such sentences?

Detective Superintendent Cameron: The alternative is taking different approaches with different individuals. It is not simply a matter of saying, "Another five weeks will do it"; we must specify what is planned for an individual on their release after five weeks. Specialised services can be put in place to deal with the points at which there is most need. We should look beyond sentencing and consider criminals' individual needs.

Superintendent Manson: We should also consider the difficulties in engaging with certain people. This may sound harsh, but some people who commit crimes live outwith the community. Signposting has been mentioned. How can we engage with such people, point them in the right direction and provide appropriate services? We must ensure that we can provide support for people with drug-related or other needs at the appropriate time. If we cannot get such people to engage in the community, prison-based assistance could be the best way of engaging with them formally over a short time.

The Convener: We will now consider part 3 of the bill, which deals with weapons.

Jackie Baillie: As the witnesses know, the bill does not seek to ban the sale of non-domestic knives; rather, it simply requires retailers to obtain a knife dealer's licence if they want to sell such items. I direct my question first at the witnesses from Strathclyde police's violence reduction unit, who have been sitting quietly. How much of our problem with knife crime is down to the irresponsible selling of knives and how much is down to their general availability?

15:30

Detective Chief Superintendent John Carnochan (Strathclyde Police): I do not think

that there are any statistics on the role that is played by irresponsible selling, but I am sure that we can all provide anecdotal or photographic evidence of some outrageously stupid activities.

I know that we are discussing how to implement the bill, but we must remind ourselves that we are trying to reduce the level of access that young men, in particular, have to knives. Statistics show that, in serious assaults or murders in homes, the weapon is likely to be a knife from the kitchen drawer. However, in assaults on the street, the weapon is likely to be a locking knife. After all, such weapons need to be concealed and, for obvious personal safety reasons, you would not put any other sort of knife down your shorts. We simply have to reduce the availability of such knives.

As the colleague from COSLA pointed out, none of us is suggesting that, on its own, the bill will resolve issues that have been around for decades. However, when taken with the other measures that either exist or are about to come into force, it can contribute significantly to addressing these problems. As I have said before, if legislation can save one life, it can be counted as good legislation, and we think that the bill could be good legislation.

Jackie Baillie: One of the committee's reports has quoted you before to that effect, and no doubt your view will find its way into the report on this bill.

I take your point that the bill is one piece of the jigsaw. However, what specific provisions will limit immediacy of access to knives, which is the outcome that we all want?

Detective Chief Superintendent Carnochan: Some young men carry these knives as a badge of pride, and I imagine that there is competition over the sort of knife that they have, where they got it, how long they have had it, where they hide it and so on. I certainly think that the bill will place more responsibility on the small minority of individuals who tend not to be so responsible when selling knives. We will have to wait for some of the detail to unfold, but any measures should include requesting the purchaser's name and address and proof of identity before a knife is sold and a ban on displaying or advertising these kinds of knives.

I think that the bill sends out a message to communities in the rest of Scotland that know where the knives are that, although we are not proud of the levels of knife crime in this country, we can perhaps take some pride in the fact that we realise that we have a problem and are trying to do something about it.

Of course, the bill will not solve the problem overnight, because young men who want knives will get them. However, that is no reason not to try and limit access to them in the same way that we limit and license access to alcohol and firearms.

Jackie Baillie: I explored with COSLA the bill's lack of a definition of domestic and non-domestic knives. Does that concern you, or is a knife simply a knife? Is the key point not the kind of knife it is, but its potential to cause damage?

Detective Chief Superintendent Carnochan: At one level, it can be argued that a knife is a knife and the question whether it is domestic or non-domestic matters not a jot if it is about to be plunged into someone's chest. However, as far as the bill is concerned, we need to remind ourselves of what we are talking about. The knives that are used on the street are locking knives and, once we can get our heads around what constitutes a non-domestic knife, we will find it easy to reach a definition—although I am sure that, as with all legal definitions, it will be difficult to read.

The Convener: You mentioned proof of identity. Are you suggesting that when someone purchases a non-domestic knife they must give proof of who they are and where they live, which will be recorded by the dealer?

Detective Chief Superintendent Carnochan: I think that that would be a very wise course of action.

Chief Superintendent Murray: It is only reasonable to expect people to provide a good reason for purchasing a non-domestic knife. We feel that public expectation is a factor in that respect. The public expect us to try to control the displays of quite horrific implements that are on general sale in certain shops.

Jeremy Purvis: Given that the provisions do not refer explicitly to non-domestic knives, might the bill result in more incidents involving domestic knives?

Detective Chief Superintendent Carnochan: As I said earlier, there are practical implications. It is more difficult for someone who is out and about to hide a fixed bladed knife or even a machete. From that perspective, such knives would be difficult to carry but might be easier to detect. We have seen some increases in that regard.

Jeremy Purvis: You made the point that even a small cut that is made with a blade less than 3in long could prove to be lethal. The committee heard evidence from officials in the Executive bill team that a licence would not be required for the sale of folding pocket knives with blades of 3in or less. Do you have any comment on that?

Detective Chief Superintendent Carnochan: If you spoke to casualty surgeons or to Rudy Crawford, they would tell you that a 3in blade that is thrust into the upper torso is likely to hit a major

structure. However, the point is that what is proposed is a start. If we look at what is happening right now, a penknife or a Swiss army knife is unlikely to be used. A casualty surgeon will tell you that any knife that gets stuck into your upper torso will do you damage. Whether a victim lives or dies comes down to luck—as well as the availability of excellent health services—more than good judgment.

Will Linden (Strathclyde Police): Knife carrying is about status and a penknife is a low-status weapon. A penknife could kill if it were to be stabbed into the right area, but it is unlikely to be carried and there is little evidence of penknives being used in knife assaults. People tend to want to use the more high-status weapons.

The Convener: A member held an event in the Parliament about weapons and the gentleman who gave the presentation said that surgeons had told him that they are discovering that one of the most offensive weapons is the Philips screwdriver. Should Philips screwdrivers be part of any legislation and control?

Detective Chief Superintendent Carnochan: We do not have any statistics on Philips or other screwdrivers. I remember reading something about that in the press, but we do not have the figures. A surgeon might tell you that he has treated someone with such a wound, and I once investigated a murder in which someone had died as a result of being stabbed with a Philips screwdriver. There is anecdotal evidence, but it comes from a small minority of incidents. However, if someone was caught on Sauchiehall Street at 2 o'clock in the morning with a Philips screwdriver in their pocket, reasonable authority and lawful excuse might come into play.

Chief Superintendent Murray: Such a person would be dealt with anyway.

I have dealt with a murder in which the weapon was a screwdriver, but not a Philips screwdriver. Where do we draw the line?

Colin Fox: I take the point about the bill inhibiting how easy it is for someone to access a knife. Do you have any concerns about the impact that the bill might have on what might be described as illicit trading in knives, whereby people get knives off the internet or by mail order but not from licensed dealers? As your colleague said, young men will go to great lengths to get such a status symbol. Do you worry that there might an increase in that illicit, unlicensed trade in knives?

Detective Chief Superintendent Carnochan: Absolutely. It is like grabbing the soap; if you grab it too tightly, it moves somewhere else.

We have some measures in place. At every airport in Scotland, people who are going on holiday are handed a leaflet showing the offensive weapons that will be taken from them if they bring them back to the country.

We have contacted one of the biggest internet auction sites, which does not want to be involved in the auctioning of knives. It is therefore keen to demonstrate social responsibility, which is great; that would also afford the site some kudos.

You are absolutely right that it will be difficult. People will get knives from their friends or they will have them stashed. We will not catch everyone who buys knives abroad and brings them in through the airport. Some parents even buy them as gifts for their kids. You can see people, when they are abroad, oohing and aahing at these horrible, dreadful things. In the longer term, we have to change the prevailing attitude.

Colin Fox: What intelligence do you have on the knives that young men carry these days? What proportion of them comes from those avenues?

Detective Chief Superintendent Carnochan: We do not have statistics on the sources of knives. That said, we have a lot of statistics on knives and even on how we record the information. We are beginning to change and improve on all that. For example, we are introducing briefing and debriefing documents in cases of murder or attempted murder. We ask senior detective officers how we could have prevented the crime and whether any other factors apply. We ask what part was played by poor street lighting or alcohol—the latter is usually involved in such crimes. We also ask what type of knife was involved and whether we know where the accused got the knife.

We are looking to undertake research with the Scottish Executive on 42 people, all of whom were under 21 when they were convicted of murder involving a knife. The research will span an 18-month period, during which all those crimes were committed in the Strathclyde area. It is an absolute shock that, over that period, 42 people under the age of 21 were convicted of murder involving a knife. We want to undertake some proper research into the knives that were used in those crimes, one of which involves a woman.

We want the researchers to consider all the factors including how the accused got the knife; what their previous convictions were; and whether they had any involvement with the services. That links into the other legislation to which members have referred; it is about prevention and protective factors, reducing risks and finding out whether we can learn from the convictions. What has happened in the past is a pretty good predictor of the future. That said—as another witness said—it is hard to make accurate predictions. That is the difficulty with risk assessments.

Colin Fox: In relation to the statistics, everyone is shocked at the disparity between the west of Scotland and the rest of the country. Your evidence seems to be that that is largely the result of cultural issues; I do not think that you are saying that access to knives from abroad relates only to Glasgow and not to Dundee or wherever.

Detective Chief Superintendent Carnochan: If you speak to accident and emergency surgeons or police officers, you will find that Glasgow has a volume of such crime. However, I do not see a north-south divide or an east-west divide. There were 137 murders in 2004-05, half of which were committed with a knife and 25 of which were committed outwith the Strathclyde area The issue is Scotland-wide, albeit that the figures will vary. Glasgow and the west may have the volume, but knife crime happens throughout Scotland.

Chief Superintendent Murray: Again, the common perception is that there is an east-west divide. However, as John Carnochan said, our information suggests that the problem is national. We need to address that.

The Convener: You say that the issue is national and you have spoken of knives being brought into the country from abroad. What about the knives that are brought by land into Scotland from other parts of the United Kingdom?

Detective Chief Superintendent Carnochan: We have as yet found no way of putting up anything at the border. I am not sure whether the committee wants to explore that issue.

The convener is right in saying that the problem is national. We liaise with the Association of Chief Police Officers—indeed, people in England and Wales are showing great interest in what we are doing on knife crime. We are talking not only about corner shops or shops in the Royal Mile; some big, national organisations such as B&Q need to think about and pay attention to the issue. It will be difficult for us to close down that avenue. We need first to win hearts and minds.

Cathie Craigie: The debate has been interesting. Even if the bill makes only a small step forward, I hope that it will be another step in the right direction. The bill will put in place the requirement for knife dealers to be licensed, although the scheme will not apply to private transactions. Will the bill produce the outcome that we want? Are you satisfied that there is no loophole in it? Should the committee lodge amendments to improve the bill?

Detective Chief Superintendent Carnochan: It would be very difficult for the scheme to cover private sales. The analogy that has been made involves second-hand dealers such as car dealers. For those who are involved in the merchandising of knives, the bill serves to send out a signal, and that is enough. What is important is the availability of the provision—the demonstration that it is in place. We need to undermine the status of knives and challenge those who carry them in every way on why they carry them. That is the longer-term work.

I accept your point, but there is an issue around dealing at the higher end. There are people who collect swords, and it would be difficult for legislation to distinguish between such collectors and others who might acquire weapons.

15:45

Cathie Craigie: We spoke about people who were buying from a licensed dealer needing to have a form of ID. Would it be reasonable to require private dealers to have some information about a person to whom they have sold a knife?

Detective Chief Superintendent Carnochan: We have been told—I accept that the argument is not particularly robust—that a private collector who wanted to acquire a sword would find the cost prohibitive, and that the cost would bring its own restrictions. If someone was paying several thousand pounds at a private sale for a collector's piece that had some antique or specific other value, we could, if we were to investigate, track the money and find out about the individual in that way. In general, however, I think that it would be difficult to do that.

The Convener: That leads us neatly on to our questions on swords.

Maureen Macmillan: Are you content with the proposal on the restriction on the sale of swords, whereby the seller must take reasonable steps to confirm that a sword is being bought for a legitimate purpose, such as highland dancing, re-enactment or the like?

Detective Chief Superintendent Carnochan: I would like to know that the process will be robust enough to ensure that the individual selling the sword could explain, in the cold light of day, who they sold it to and the circumstances in which it was sold.

Maureen Macmillan: What steps would you like to be taken to achieve the aim of ensuring that the seller is selling the sword to a legitimate person or organisation?

Detective Chief Superintendent Carnochan: It would be the same as having proof of name and address. We could go from one extreme to the other. The seller could say, "You can come in and buy the sword, and we will post it to you." That would confirm the address and ensure that the goods were paid for. If a member of a highland dance or historical re-enactment organisation wanted to buy a sword, perhaps they could be

asked for the name of the organisation and proof of their membership. I do not have enough knowledge of such organisations to be able to say whether that would be possible, but that would be the ideal.

Chief Superintendent Murray: Such a system is not without precedent. It is routine for individuals who are buying shotguns and other firearms to have to produce evidence such as written confirmation of membership of a gun club. It would be reasonably practicable to do that with swords, but perhaps not with knives.

Maureen Macmillan: Last week the worry was flagged up to us that, although people might not buy swords costing thousands of pounds, they could go and buy a sword that was supposed to be for highland dancing or re-enactment and then go home and sharpen it. If they had to produce a document to show that they have membership in a bona fide club, would that help?

Detective Chief Superintendent Carnochan: Asking people to do that would not be particularly onerous. More important, it would not be onerous on genuine members of such clubs who are genuinely pursuing their hobby or interest. For those who are buying swords for other purposes, we should make the process as onerous as possible.

The Convener: Thank you for your evidence, gentlemen. If you feel after the meeting that there is further evidence that the committee could use, please send it to the clerks as soon as possible.

Jackie Baillie: The gentleman from the violence reduction unit referred to photographs of some extraordinary displays of knives. It would be helpful for us to see those photographs so that we can appreciate just how daft the situation is.

The Convener: I welcome our third panel of witnesses, who are from the Prison Officers Association Scotland. We have with us Derek Turner, the assistant secretary, and Kenny Cassels, the vice-chair. I thank them for coming.

The Scottish Executive has stated that the bill may result in a requirement for an additional 700 to 1,100 prison places. Is that a reasonable estimate? Given that the prison population is at an all-time high, how would such an increase impact on prison staff?

Derek Turner (Prison Officers Association Scotland): In our experience, such figures are always underestimates. When the legislation was changed to do away with people having to pay money to bail people out of prison, we were told that the prison population would reduce immensely but, within a few months, it was back to the same as before, because people broke the police bail and then could not pay themselves out, so the prison population increased. When remission was changed to 50 per cent, we were told that that would empty the prisons but, within six to nine months, we were back in the same situation as before. Now we have fewer prisons than we had before and an all-time high population.

My colleague Kenny Cassels will be able to give you the figures on the reduction in front-line prison staff as a result of us doing our job to make greater efficiency savings for the Scottish Prison Service, which has had an impact on what prison staff can deliver. It has become increasingly difficult to deliver the services with the current number of staff.

Kenny Cassels (Prison Officers Association Scotland): If the bill came into force tomorrow, the Prison Service would implode. We are stretching at the seams at the moment, with record prisoner numbers—the figure now runs consistently at more than 7,000. I never thought that I would see the day when Scotland imprisoned 7,000 people, but we are doing so. Derek Turner is perfectly right to say that, in the past six years, as part of the continued drive for efficiencies in the Prison Service and the wider public sector, the service has reduced staffing numbers by 22 per cent. At the same time, prisoner numbers have increased by 29 per cent. We have fewer prisons and fewer staff, but more to do. As I said, if the bill came into force tomorrow, with no phasing in whatever and without our having in place the staffing, proper infrastructure and capital investment to build new prisons, the Prison Service would not cope.

The Convener: Given that there may be two new prisons, where will the prison staff come from? I believe that a shortfall in staff is on the horizon because of people retiring.

Kenny Cassels: It was decided to build two new prisons in 2002, when Jim Wallace made an announcement in Parliament on the SPS prison estate review. The contract has been awarded for the first prison, which will be at Addiewell. We hope that the second one will be at Low Moss, although that depends on the outcome of a planning appeal. The Scottish Executive and the Parliament set a challenge to the SPS and the trade unions to compete in an open-market competition with the private sector for the second new prison at the Low Moss site. As trade unions, we would have preferred the first prison to have been in the public sector, but we hope to achieve a positive outcome in the bidding process for the second one at Low Moss.

The Convener: My question was about where the staff will come from, should those prisons come on stream. Is it likely that quite a large number of prison officers will retire and, if so, how will they be replaced?

Kenny Cassels: The private sector will recruit its employees for the first prison directly. If the bid for the bridging the gap project is successful, the employees at the second prison will be public sector employees as enshrined in the civil service management code.

We do not foresee that a significant number of prison staff will retire in the very near future. There is a healthy turnover of staff, which results from retirements and people leaving, but we do not think that filling the vacancies of retirees will be a significant problem.

Derek Turner: The SPS assesses the situation regularly and there is about to be a new intake of recruits. In places such as the north-east of Scotland, it can prove difficult to recruit and retain people. The wages that the SPS pays and the presence in the Aberdeen area of the oil industry make it increasingly difficult to retain prison staff in jobs in that part of the country.

In addition, we find that people sometimes want to work in the Prison Service for just a few years so that they can put it on their CV—they might want to be a psychologist, for example. After gaining a few years' practical, hands-on experience in a prison, they move on.

Maureen Macmillan: You mentioned the increase in the number of prisoners, overcrowding and the reduction in staff numbers. Does overcrowding have a significant impact on your work on the rehabilitation of prisoners? Perhaps you could tell us about the rehabilitation work that prison officers do and how overcrowding affects it.

Derek Turner: We have a number of intervention programmes, including drug reduction and anger management programmes, and a range of regimes to address offending behaviour. I think that Colin Fox was at the launch of the annual report of the chief inspector of prisons, who encapsulated the problems of overcrowding in nine points. He highlighted the fact that when the prison population increases, staff have great difficulty just meeting prisoners' bare needs and ensuring that common decency is upheld. If a prison is overcrowded, a strain is put on the logistics of providing people with showers, clean clothing and adequate meals. If the provision of the basics is strained, the provision of rehabilitation programmes becomes strained, too.

Although we have managed to meet our key performance indicators over the past few years, we have told SPS management that we have found it increasingly difficult to maintain rehabilitation programmes at the same time as ensuring that prisoners get the common decency that we are required to deliver under the European convention on human rights.

Kenny Cassels: I will use the term "chronic overcrowding" because we believe that it describes the present situation. As well as affecting the prisoner group, chronic overcrowding can have a dramatic effect on staff. It increases their workload and the amount of stress that they experience in the workplace and has health and safety implications. More staff members are going off sick from work-related stress as a result of having to deal with record numbers of prisoners, to the extent that the organisation is now working with the trade unions to put in place access to stress treatment. Those are some of the impacts that having to deal with overcrowding can have.

Maureen Macmillan: Am I right in thinking that rehabilitation programmes are delivered mainly to long-term prisoners rather than to short-term prisoners?

Kenny Cassels: Yes.

Maureen Macmillan: Does having to deliver such programmes to short-term prisoners add to the stress?

Kenny Cassels: It is difficult to deliver any kind of programme to a very short-term prisoner, by which I mean a prisoner who is on a sentence of less than three months. As Tony Cameron said in his evidence to the joint meeting of the justice committees on 31 October, if someone is sentenced to fewer than three months in prison, we basically patch them up, take care of them and try to get them back on an even keel so that they can go back out on the street. We try to do as much as we can but, as you can imagine, it is difficult to deliver any form of rehabilitation programme in any depth in three months.

Derek Turner: One of the accompanying documents to the bill mentions that it would cost £5.5 million to £6.5 million for the extra 17 or 18 officers per thousand prisoners that would be required. That assumption was based on today's rates, but it does not seem to take into account the large number of people who will have to be considered by the Parole Board for Scotland for the part of their sentence for which they will not be in custody. My reading of the bill is that it will mean more work for prison officers in the galleries, because they will have to do reports to the Parole Board that they do not have to do now.

Mr MacAskill: The next question has been superseded.

16:00

Colin Fox: I met Derek Turner and Kenny Cassels last week at the launch of the annual report by Her Majesty's chief inspector of prisons for Scotland. It has been widely reported that Dr McLellan stated that one of the nine consequences of overcrowding that we are dealing with in prisons is the impact on risk assessment and the assessment of the

vulnerability of prisoners. They will be perhaps even more vulnerable if they spend less time in prison. What do you think of the Executive's estimates of the additional resources that will be necessary to cope with the increased demand? You have said that we already have a prison population of 7,000. A previous witness from the SPS said that the bill could increase that by another 1,100 prisoners.

Kenny Cassels: It is difficult to comment on the figures that have been quoted, simply because a whole load of assumptions have been made. The only figures that we take exception to refer to the cost of financing a new establishment. The figures indicate that it would cost £160 million for a public sector procured build and £100 million for a private sector build. As far as we are concerned, those figures emanate from the prison estate review of 2002; they have been lifted directly from that. We question those figures, given our involvement in the bidding process for the Low Moss site. We think that the public sector can go some way towards bridging the gap between those figures.

Colin Fox: Let us be clear. Do you think that the figures are too high, too low or not robust?

Kenny Cassels: The Executive is quoting £160 million for a new public sector jail, and we do not agree with that.

Colin Fox: You question the disparity between the two figures rather than the cost of a new prison being in that ball park.

Kenny Cassels: Yes.

Derek Turner: The Prison Service has said that phasing in would be important and that the increase in prisoner numbers would have to be taken into consideration. We would hate it if the resources were not made available timeously. We do not want to be in the position of receiving large numbers of prisoners and having to catch up with that by recruiting staff, training them and trying to build additional spaces. The change must take place on a planned, phased basis, and there must be a more cohesive approach—a strategic approach, as my colleague says—to the financing of prisons. We are not saying that we need all the money at once but, if we are going to phase the expansion, we need to have the money when it is required and not have to catch-up to deal with large numbers of prisoners without the resources to do so. Even if the resources have been committed, we need to know that the resources are there and that we are planning for the increase in prisoner numbers.

Colin Fox: One big aspect of the bill is the pressure to reduce reoffending—which has been agreed across all parties. I notice that, in the report by Her Majesty's chief inspector of prisons for Scotland, the one piece of good news is the fact that 92 per cent of prisoners feel that their relationship with prison staff is either okay or better. The jewel in the crown is the one-to-one working relationship between staff and offenders, which reduces the likelihood of prisoners reoffending. You state in your submission that there has been a reduction of around 700 in the number of prison staff.

Kenny Cassels: It is more than 800.

Colin Fox: We are also talking about a great increase in the prison population. How can we have greater confidence than we have at the moment in the SPS's ability to have a 1:1 or 1:2 ratio of staff to offenders on programme work?

Derek Turner: That was one of the key points that Andrew McLellan made during his presentation. As overcrowding continues, our current relationship with prisoners could be destroyed. I would hate to see us go back to the situation that existed in the late 1980s, which we both experienced. Back then, overcrowding was rife and there was mass insurrection in the prisons. I would hate to see the relationship between prison officers and prisoners deteriorate because of overcrowding.

Colin Fox: Speak starkly to us. How likely is that, given the pressures of the reduction in staff and the increased number of prisoners?

Kenny Cassels: In any society, prisons operate only with the good will of prisoners and staff; their relationships must be good for a prison to operate well. There is no doubt in our minds that if overcrowding continues to increase, those relationships will begin to suffer, as staff will not be able to find the time to deliver a normal day-to-day regime. They will end up chasing their tails and having to leave their residential area to do other duties to cover the additional workload. In our view, there is no doubt that relationships will suffer, although how dramatically they will suffer is another matter. Like Derek Turner, I would not want to go back to the situation of the late 1980s and early 1990s—I am sure that nobody in Scotland would. We are not saying that that will happen, but overcrowding affects more than just the daily prisoner regime—relationships can be affected as well.

Colin Fox: You have an anxiety that the bill could add to that.

Kenny Cassels: Yes, if the bill is implemented in full from day one without serious consideration being given to the infrastructure that is needed to support it and the additional funds that will be required to fund it. The bill will require an additional 700 to 1,000 spaces. We have no reason to doubt the figures given by the SPS and the Executive in that respect.

Derek Turner: Andrew McLellan told me that he is disappointed that the overcrowding is so bad and that there are so many people with mental health issues. I told him that, when I started my job in 1975, we were talking about horrendous overcrowding and many prisoners having mental health issues. In 2006, we are still talking about the same things.

Jeremy Purvis: You have questioned the figures that have been provided for the case management system and mentioned the burden that will be placed on staff. Will you outline staff involvement in the processes that will be requested of you under the bill? On a practical level, what will be involved for staff?

Kenny Cassels: The move to community justice authorities will bring about a change in how offenders are managed in prisons. The casework that will be undertaken will mean staff getting involved not only with specialists within the prison, but with external agencies in delivering community ethos and putting a prisoner back into the community a better person. Undoubtedly, there will be an increase in workload for staff in meeting the needs of the community justice authorities and managing the transition of offenders from prison back into the community.

We have made the point before—I do not recall whether it was to the Justice 1 Committee or the Justice 2 Committee—that a prison officer can work with a long-term prisoner over four years and, all of a sudden, the minute the prisoner goes out of the gate, that involvement comes to a halt. That will change with the introduction of community justice authorities, so there will be an increase in the workload of individual prison officers who work on casework.

Jeremy Purvis: In your written submission, you refrain from commenting on sentencing policy, which you say is a matter for civil servants. I will ask the question anyway, and you can decide how to answer it. You will have heard previous panels respond to a line of questioning about the effectiveness of short-term sentences. As I read the proposals in the bill, the lion's share of the burden on prison staff will be in doing work—which, by and large, could be good, progressive work with individuals—with offenders who are on short-term sentences. If I heard you correctly, you said that you will carry out the assessments of people for whom you currently do not carry out assessments.

My question is in two parts. First, in your view, what proportion of the current prison population should not be in prison? You said that you question whether prison is the most appropriate response and whether, for some people, alternatives to prison should have been considered prior to sentencing. Secondly, in your professional experience, will the assessments that you will carry out for short-term prisoners be more effective than assessments done at a community level that do not involve your officers? Should an assessment of what programmes are required be done outwith prison from the start?

Kenny Cassels: I certainly agree with your last point. It is not productive to send someone to prison to serve a very short sentence. I understand my police colleagues' point about giving communities respite from serious and habitual offenders, but all that the prison environment does for those who serve short sentences is to patch them up, stabilise them if they abuse drugs or alcohol and put them back into the community.

Prison is not suitable for people with short sentences. More can be done for them in the community, but the decision is one for the courts. We just do what the courts ask.

Jeremy Purvis: At present, 48 per cent of the prison population serves a sentence of less than three months and about 82 per cent serves less than six months. If I understand correctly, you would like to focus on offenders who serve longer sentences because you think that your involvement will be more effective. Can you say what proportion of the prison population today should not be in prison?

Derek Turner: It is difficult for us to assess that. We have sorted out the situation whereby someone who is picked up for a short sentence for a fine default is lifted on the Friday morning and liberated on Friday afternoon with a discharge grant, which is absolutely ridiculous because we still have to put them through the whole process and that is a waste of resources and public money.

The Convener: Could your association provide the figure that Jeremy Purvis asked for?

Derek Turner: It would be difficult.

Kenny Cassels: It would be up to the Scottish Prison Service to provide that.

Derek Turner: It is many years since I worked as a prison officer, but we found that we could do little for people who serve short sentences. At one time, we talked about learning packages and whether we could offer modules that people would study while they were in prison and continue outside. That modular training was not further education as such, but it was an attempt to give people a qualification. Otherwise, we were doing absolutely nothing for them. At one time, they would be put in a work shed and they would do inane jobs such as sewing mailbags or sorting out bits of cardboard, but we were doing nothing to address their offending behaviour. The same

person could go back and forth, doing three months or six months repeatedly over a long period of time. If we can do something to address that, we should. It is tragic that some people serve almost a life sentence doing short sentences.

One of the biggest tragedies I saw in the Prison Service when I worked as a prison officer in Barlinnie was the old alcoholic people who spent their lives on the streets and went in and out of prison. Prison kept them alive because they came off the drink for a few weeks and they were given good food, but when they were liberated they went back to their drinking habits and lived rough on the streets. They would go back into prison, dry out and get food and medication, then go back out on the streets again. That seemed to be the pattern of their lives. I worked at Barlinnie for 15 years and I saw the same people coming in and out. Prison was the wrong place for them, but it was the only disposal available. There were no hostels that could take them and do the same job as we were doing.

Jackie Baillie: In your written submission, you express concern that the legislation that prohibits the carrying of knives in public places does not apply to prisons because they are not deemed to be public places. What problems does that cause in prisons?

Kenny Cassels: We had an example recently at HMP Perth. While a prisoner was out and about in the prison carrying out their work, prison staff found a lock-back knife. The incident was reported to the local police and referred to the procurator fiscal, but he referred it back to the prison, saying that he would not take action as prisons were private places.

Our concern is that in the current legislation there is a lack of direction to procurators fiscal on whether it is a criminal offence to have a dangerous weapon in prison. It is a criminal offence and should be acted upon. On the one hand, we say that prison is a private place and, on the other, the smoking ban that was introduced in March decreed that prisons were a public place. Prisons are a public place, and the law should apply in prisons as it does out in the community.

16:15

Derek Turner: We appreciate that that point perhaps does not relate to the terms of the bill, which deals with licensing knives, but it is a point of principle and we thought that we should bring it to the committee's attention.

Jackie Baillie: You are right to do so. I assumed that if someone was carrying a knife in prison, there would be regulations or procedures that would deal with it internally.

Kenny Cassels: We can place the individual on report but, in our view, the sanctions that are open to an orderly room, for example, would not punish an individual sufficiently for carrying such an item.

Derek Turner: I might be digressing a bit, but in Scotland, if someone is found with a mobile phone in prison, which is an offence, it is taken off them and put with their other property. I believe that, in England, if someone is found with a mobile phone in prison, they are taken before a magistrate and given a statutory sentence of about 60 days or three months.

Jackie Baillie: That is interesting.

The Convener: Thank you for coming along. If there is anything further to your evidence that you want to send us, please send it to the clerks.

Kenny Cassels: I will leave a copy of the figures that the Prison Officers Association Scotland has put together.

SUPPLEMENTARY SUBMISSION FROM THE CONVENTION OF SCOTTISH LOCAL AUTHORITIES AND THE ASSOCIATION OF DIRECTORS OF SOCIAL WORK

The Convention of Scottish Local Authorities (COSLA) and the Association of Directors of Social Work (ADSW) welcome the opportunity given by the Scottish Parliament Justice 2 Committee to contribute additional information to the scrutiny of the Custodial Sentences and Weapons (Scotland) Bill

This supplementary submission is in response to the request from the Justice 2 Committee for further information on

- Statistics that demonstrate the difference between the reconviction rates of those who have served a custodial sentence followed by some community intervention and those who have served a custodial sentence only
- What alternatives might there be to simply returning to custody for those who breach their license
- What conditions local authorities would be likely to impose in relation to licensing schemes for knife sales

Custodial Sentences

ADSW can advise that the Scottish Executive does not publish reconviction figures related to whether or not the individual has been on supervision. The Scottish Executive Analytical Services has been contacted by ADSW to discuss whether this data was available for ad hoc analysis and have been advised it is not.

ADSW has been advised that these figures are on their forthcoming agenda and have requested that the Scottish Executive Analytical Service clarify this. ADSW believe it would be more effective if Justice 2 Committee makes the enquiry direct to the Analytical Services Unit of the Scottish Executive. The bulletin in which the most recent reconviction figures appears is Reconvictions of Offenders Discharged from Custody or Given Non-Custodial Sentences 2002/03.

In answer to the Committees question regarding what alternatives might there be to those returning to custody after breach in their license ADSW has the following comments:

The Courts have a range of options available to them depending on what order is being breached including extensions of hours, additional conditions etc. Also for failure to pay a fine there is Supervised Attendance Orders.

Options at breach might include being able to pay the original fine for breach of SAO; the imposition of a fine for breaches of probation, CS, DTTO etc. - perhaps with the attachment of earnings or benefits; restriction of liberty orders or tagging.

It is of course important that breaches are dealt with quickly - many are outstanding for 6 months or more after the breach report is submitted. It is suggested long delays significantly reduce the impact of the breach process.

Resentence for the original offence - especially for breach of Community Sentence which is meant to be an alternative to custody.

Weapons

In the COSLA and ADSW submission to the Justice 2 committee on 7th November 2006 in the section entitled Knife dealers' licence conditions it stated that:

COSLA recommends that the Bill should be amended to place a condition on dealers to **display a notice** stating the offences in the Criminal Justice Act 1988 as amended regarding the sale of knives etc. to persons under 18 years.

Additional conditions that could be placed on knife/sword dealers include:

The license must be displayed at all times stating:
- Specific times and place where knives/swords etc can be sold
- What types of weapons the license covers

The License Holder agrees to:
- Keeping the weapons in a secure place
- Criminal record check
- Staff training
- Annual registration which requires administration and site visits by local authority officers
- Give permission for the local authority responsible for issuing the license to notify the Police of all license holders in their area.

Fee Level

A cost recovery model is the suggested form of financing the licensing scheme. However, it must be recognised that over the years, **a number of small-scale, supposedly "cost neutral" schemes have been implemented by local authorities**. Being small-scale, they do not individually warrant a dedicated member of staff. However, **cumulatively, they represent a growing burden on local authorities**. **There are a relatively small number of businesses that sell knives and the cost recovery model suggested has potential to move the cost of the scheme on to local authorities through additional administration and regulation in ways which will not be "cost neutral".**

In response to the question asked at the evidence session COSLA undertook an appraisal of local authorities' current licence schemes. Some examples given are as follows:
- If a retailer wants to sell fireworks all year round the cost of the licence is £500.00
- If a retailer wants to sell fireworks in November only a registration fee is paid of £72.00
- A petrol filling station would pay £110.00 for a licence (depending on tank capacity)

Whilst the new legislation gives local authorities the ability to set their own fees it is anticipated to an extent that fees will be set within a similar range, as appropriate.

Conclusion

As stated in first submission COSLA and ADSW welcome the general direction of the Custodial Sentences and Weapons (Scotland) Bill. However, we propose that the potential it has for impacting on both community safety and reduced offending, will be very much dependent on its comprehensiveness, its integration with the wider community justice and community safety agendas, and the level of resourcing made available to implement it effectively.

30th Meeting 2006 (Session 2) 14 November 2006

SUBMISSION FROM VICTIM SUPPORT SCOTLAND

Introduction

Victim Support Scotland is the largest agency providing support and information services to victims of crime in Scotland. Established in 1985 the organisation currently employs around 180 staff and 1000 volunteers. In 2005-2006 our community based victim services and court based witness services supported 170 000 people affected by crime. Through our contact with victims and witnesses, we have identified a need to demystify the criminal justice process to the general public and to make sentencing more transparent. These are two of Victim Support Scotland's policy objectives and reflect the views we will be taking regarding the new bill.

Crime in Scotland

Victim Support Scotland is aware that crime in Scotland today is falling. Cathy Jamieson stated last week that violent crime is at its lowest level since devolution and that last year there were 20,000 fewer crimes recorded by the police. However, Scotland still has a problem with re-offending. Figures show that 45 % of offenders discharged from prison or given a non-custodial sentence in 2002-2003 were reconvicted within two years. This must be addressed; Victim Support Scotland therefore welcomes new legislative initiatives and willingly accepts the opportunity to provide a response regarding the Custodial Sentences and Weapons (Scotland) Bill.

The Custodial Sentences and Weapons (Scotland) Bill

The Custodial Sentences and Weapons (Scotland) Bill contains provisions within two broad policy areas: provisions on custodial sentences and provisions relating to knives and swords. We have divided our response according to the two policy areas.

Custodial sentences

Time spent in custody
According to the new bill, sentences of 15 days or more will have a minimum of 50% spent in custody. Courts will have the power to increase the time spent in custody to a maximum of 75% of the sentence by considering the seriousness of the offence, previous convictions and the timing and nature of a guilty plea. The court will however not be able to take into account the risk the person may present to the public when determining the length of the custody part, since this will be assessed during the custody part and, if necessary, will be decided by the Parole Board. Victim Support Scotland does not see the Parole Board's assessment as an obstacle to the court's review and would like the protection of the public, including the views and opinions of the victim, to be taken into account by both the court and the Parole Board. The criminal justice system serves to reflect the wishes and needs of the public, and should fulfil the society's expectations of punishment and deterrence. For the court to take the protection of the public into account when determining the time spent in custody would seem to be in the public's interest. It may also increase people's view that "justice" has been done, which increases the public's faith and trust in the criminal justice system.

Release on licence
Before the expiry of the custody part of the sentence, the bill proclaims that a review should be made if the person would, if released on licence, "be likely to cause serious harm to members of the public". Victim Support Scotland supports the consideration of public safety, which includes the victim(s) and witnesses. A proper assessment of the offender's individual circumstances significantly improves today's practice of automatic and sometimes unconditional release.

If a person is seen to not cause a threat to members of the pubic, the person must be released on community licence. The licence may include certain conditions. If the prisoner breaches a licence condition, if Scottish Ministers think it is likely that a person will breach the licence or if it is in the public interest, the Scottish Ministers must revoke the licence. Victim Support Scotland supports the use of license conditions. We would however like to stress that for these conditions to be

affective and fully respected, they have to be communicated appropriately to both the accused and the victim(s). Both parties should also be informed of the consequences if the offender breaches any of the conditions in the licence. Regarding revocation of licences, Victim Support Scotland supports the possibility for Scottish Ministers to take account of the public interest, including safety of the public at large. We are also positive to the mandatory wording, that the licence must be revoked, which will hopefully lead to consistency and predictability in the practice.

The community licence is in force until the sentence expires (for custody-only and custody-and-community prisoners) or for the remainder of the prisoner's life (life prisoners). Victim Support Scotland agrees with this practice, which will hopefully increase the public's faith in the justice system, as offenders will be seen to serve the entire court imposed sentence and not just the custody part of it.

Victim Notification Scheme
This need for victim(s) to receive information regarding community licence and attached licence conditions is not appropriately reflected in current legislation. Victim Notification Scheme is a statutory scheme, which gives eligible victims the right to receive certain information regarding the offender, for instance date of release. To be eligible to receive this information, the offender has to be sentences to a period of imprisonment of four years or more. This is a high threshold, which disqualifies many victims from receiving any information regarding the offender. According to Criminal Justice (Scotland) Act 2003, section 16, subsection (4)(a), Scottish Ministers may amend the specified time period. Due to an increased need for information attached to community licences and their conditions, Victim Support Scotland wish the Ministers would take this opportunity to specify a shorter time period, to allow more victims to be eligible to receive information.

Parole Board
If the person is seen to cause a threat, the person will be referred to the Parole board for further review. However, the Parole Board will not be able to prolong the period spent in custody beyond the period imposed by the court. Victim Support Scotland supports the practice of referring prisoners to the Parole Board, since it takes the concerns of the public, including victim(s) and witnesses, into account. The Parole Board is already operating (considering parole for prisoners serving a sentence of four years or more) and we commend the extension of the Parole Board's functions, which will hopefully make parole releases more tailored to the individual prisoner.

Additional resources
The new provisions appear likely to have implications for the workload of agencies such as Criminal Justice, Social Work, and the Parole Board. It will be important, therefore, that appropriate resources are made available to those agencies charged with the implementation of this legislation.

Weapons

Knives
The bill introduces a mandatory licensing scheme for the commercial sale of swords and non-domestically knives, to be known as a knife dealer's licence, with local authorities being the licensing authorities. The knife dealer's licence is required for people who carries out business as a dealer in knives and other specified articles, and is hence not needed for private sales between individuals. Many people that Victim Support Scotland comes in contact with have been victimised by knife violence. Even if the knife is not intended to be used, it may be carried for protection, intimidation etc. If a threatening situation arises, the knife is sometimes brought out, which increases the gravity of the situation and may lead to violence and injuries that had not taken place without the knife. The number of people jailed for carrying a knife has risen 20 per cent in the last five years. Victim Support Scotland therefore strongly supports the proposed regulation, as the need for a knife dealer's licence will hopefully decrease the number of knifes in the general public's hands.

Swords
The new bill proposes that the sale of swords will be banned, subject to exceptions for specified religious, cultural or sporting purposes. By decreasing the number of swords in the general public's hands Victim Support Scotland hope that this regulation, along with the introduction of a knife

dealer's licence, will decrease the general violence using these tools and make Scotland's communities safer.

Conclusion

The provisions regarding custodial sentences strive to end automatic and unconditional early release of offenders and to achieve greater clarity in sentencing. The new management regime aim to provide a clearer system for managing offenders while in custody and on licence in the community, to take account of public safety by targeting risks and to have victim's interests at heart. The goal is to enhance public protection, reduce re-offending rates and increase public confidence in the justice system by fulfilling society's expectations for punishment and deterrence. The objective of the provisions regarding restricting the sale of non-domestic knives and swords is to tackle knife crimes and violence in general by helping to prevent that these potentially dangerous weapons fall into the wrong hands, which will lead to safer communities. Victim Support Scotland is positive to the proposed regulations, which we hope will fulfil their stated goals. The great number of knife crimes shows there is a great need to reduce the number of knives in the general public's hands. Regarding the custodial sentences, we hope that the new regulations will help the courts take greater consideration of the views and needs of victim(s) and witnesses in their choice of sentence. We would like to stress that regarding the new community licence regulations, both the offender and victim need to get extensive information of the sentence, the reasons behind it and licence conditions for the new regulations to be fully applied and appreciated by all parties.

SUBMISSION FROM THE SCOTTISH CONSORTIUM ON CRIME AND CRIMINAL JUSTICE

Introduction

The Scottish Consortium on Crime and Criminal Justice (SCCCJ) agrees that public protection is paramount and that if offenders are assessed as at high risk of causing harm they should be detained in prison for lengthy periods and be subject to supervision on release.

SCCCJ of course supports, in principle, the Policy Objectives of this Bill to:
1. provide a more understandable system
2. take account of public safety by targeting risk
3. have victims' interests at heart.

We also support, in principle, the intentions to:
- enhance public protection
- reduce re-offending
- increase public confidence in the criminal justice system.

SCCCJ commented in May 2006 on the Sentencing Commission report "Early Release from Prison and Supervision of Prisoners on their Release". The Consortium at that time, expressed its concern about the Commission's proposals on grounds both of clarity and effect. The Consortium also studied the Scottish Executive's proposals for legislation "Release and Post custody Management of Offenders" and its concerns remained. The concerns increased on reading the Bill.

The Consortium regrets very much that the Scottish Executive is choosing to follow a path that, far from achieving the above goals and intentions, would incur huge costs and have serious negative and we believe unintended, consequences for the criminal justice system and for the safety of Scottish communities. The Bill, if implemented as it stands, would not achieve its objectives, as it would:
1. not be easier to understand than the present system
2. bring into the risk assessment process such a large number of offenders that it would require a large increase in bureaucracy and processing which will use up resources which would be better invested in front-line services that reduce re-offending and in dealing with the most dangerous offenders on whom the risk assessment and supervision resources should be concentrated
3. not address victims' interests adequately.

Nor would the Bill achieve its intentions as it would:

- hamper resettlement work and reduce public protection because the system, as mentioned above, would divert resources from dealing with those who are the greatest risk
- impact little in reducing re-offending
- do little to increase public confidence, as the system would still be difficult to understand.

4. Furthermore, the proposals would increase the prisoner population considerably. The projected increases would lead to Scotland having the highest imprisonment rate in Western Europe, more than double that of Finland, Sweden, Denmark and Norway, and even more than Hungary and Bulgaria!

5. An additional point the Consortium wishes to make is that if the current provisions for prisoners sentenced to life remain "fit for purpose" as stated at Para 31 of the Policy Memorandum, then the existing provisions should simply be re-enacted in full in this Bill. Although this same Para stats this is the case, there are some apparently significant changes. For example, Section 34 (2) says, "Where a prisoner's life licence is revoked by virtue of section 31(1) or (4), the prisoner must be confined until the prisoner dies." This is not the case at present. It is unclear whether section 34(3) means the above would not happen if the Parole Board directs the prisoner be released.

   Also, at section 15 (7) the wording is unusual for a Bill, saying "it does *not matter* [our italics] that a punishment part so specified may exceed the remainder of the person's natural life." This is ambiguous and strangely worded for a statute.

The following expands on the above.

The proposed system will not be easier to understand than the present system.

It is that important public confidence and understanding of sentencing is increased. The Consortium strongly supports the proposal to explain fully, at the point of sentence, what the sentence means in terms of custody and time on licence in the community. The sentencer should emphasise that both the custodial and community part are integral to the sentence and that it is divided in this way to best achieve its purpose – the reduction of re-offending – which should also be stated.

However, such a requirement, if applied to the existing system, would have removed much of the public misunderstanding which led to the criticisms of the present system.

The Consortium does not want sentences to be served in full in prison because to do so would limit the prospects for successful resettlement and increase the chances of further involvement in crime. It strongly supports sentences being served in part in the community as being an effective basis for rehabilitation backed up by statutory supervision.

SCCCJ would like to see sentencers explain that the sentence is divided into a custody part and a community part to achieve the purposes of:

- punishment
- making the person safer on release from prison
- making the person safer by the end of the sentence.

The Consortium, is pleased that automatic early release will remain, at the 75% point, to ensure that some period of the sentence is served in the community. The SCCCJ supports this for good practical reasons.

Counter to the objective of the Executive, the proposed new system appears more complicated to operate, more uncertain in its effect and more difficult to understand and more open to public confusion than the system it would replace. In the proposals there are many more uncertainties and variations in the sentence.

The proposed system would bring so many prisoners into the risk assessment process that it would require a large increase in bureaucracy and processing which will use up

resources that would be better invested in much-needed front-line services that reduce re-offending by dealing with the most dangerous and also dealing with the lower level persistent re-offending from which some communities suffer.

Key to making the new system work would be a higher threshold at which risk assessment would have to be conducted on all prisoners. We do not object to the principle of assessing risk but to which categories of prisoner it would be applied. At the lower end of the sentence range the proposed new system would be unworkable as there is such a large number of people involved. A significantly higher threshold would be needed.

To bring into the process all these short sentence prisoners is:

- not practical
- not value for money
- would use up scarce resources better used to work with: those at high risk of causing harm, including keeping them in prison longer and supervising them in the community; and those who are a high risk of re-offending, i.e. the persistent offenders who need to be supported in the process of desisting from offending, through having a key worker who can work with and challenge the offender and assist with- accommodation; rebuilding relationships; positive opportunities for learning, employment and to take responsibility and make amends.
- Alternative options for higher thresholds, could be six months, 12 months or 24 months sentences, given that those given these shorter sentences are by definition not at risk of causing serious harm.

If those under 6 months did not have to be risk assessed the numbers going through this process would reduce by approximately 7000 per annum.

Para 144 of the Financial Memorandum of the Explanatory Notes says, "The proxy for high risk of harm is based on those convicted and sentenced to more than one year for a sexual or violent offence…". This would seem to add weight to the argument for at least a 12-month threshold.

Similarly, if the threshold for any sort of licence was six months and that for supervision 12 months or more, the numbers requiring recall and supervision would also reduce. This would enable both prison and community resources to be effectively targeted on those most likely to present risk of harm, providing better value for money.

Practicality/Risk and the Short Sentences

The Consortium strongly supports better release arrangements and community support for short-term prisoners but not linked to a complicated system of risk assessment and release arrangements.

It is proposed that if a prisoner serving 15 days or over is not released at the half-way point, his case would be referred to the Parole Board. To consider the case properly, papers would need to be prepared and sent to the Parole Board. While there would be more time with longer sentences, over 80% of sentences imposed in any year are for 6 months or less. It is impractical, before the end of short sentences of under 12 months in total i.e. 6 months in custody, for:

- Scottish Ministers to comply with Part 2 Section 7 which spells out the positive requirement for the Scottish Ministers and each local authority to: jointly establish arrangements for the assessment and management of risk during the custody part; and obtain the documentation from the police, court, social work department and prison necessary to jointly conduct the review the risk of letting the person out at the half way stage as opposed to keeping them in prison for a period, to protect the public; and then make the application to the Parole Board
- the Board to carry out its review and arrive at a decision whether to release or not.

The Policy memorandum states at Para 19 that "The level of joint working and the assessment

required will be proportionate to the nature of the crime and the length of sentence." Firstly, this reverts to length of sentence being an indicator of seriousness, which may be reasonable but is not consistent. Secondly, although it is recognised there may be different levels of intensity of risk assessment, the administrative process would still have to be carried out for all.

It would, of course, be highly artificial to have such a process at the lower end of the sentence range. We would agree, that almost by definition, the risk to the public from someone sentenced to 15 days will be small. The protection of the public from keeping a person in prison for 15 days rather than 8 is negligible. As sentence length approaches 4 years (the current point where automatic release at the half way point of a sentence ends), there is some significance in the extra length of time which might be served in prison under the proposed new arrangements, in terms of public safety.

The proposals state that "offenders will be subject to regular review [Policy Memorandum Para 19] during the custody part". How real or practicable would this be if the prisoner is in custody for a short time? The proposals say that the licence conditions would enable provision for a variable and flexible package of measures including supervision if required. How meaningful a package could be created while the prisoner is in custody for a short time and under licence for another short period? So it states [Policy Memorandum Paras 24,25] that there would simply be a good behaviour condition for those sentenced to less than six months sentence. More worryingly, the time spent on considering the risks and licence requirements of very short sentence prisoners would deflect attention from those prisoners whose risk is significant by overloading the system with unprofitable bureaucracy.

Resources

This proposed system would require huge additional resources (Financial Memorandum of the Explanatory Notes P32), which would be diverted to prison building and management from elements of the criminal justice system which are crucial to reducing re-offending.

To make the transition from the custody part to the community part effective will require investment in throughcare, on the model of the Pathfinder Community Links Centre and on the supervision of ex-prisoners during the term of the community part. Resources for supervision and support, which could particularly impact on reducing re-offending of those at the lower end, are stretched at present and nowhere near adequate to cope with the proposed increase in workload.

Effects on the Prison Population

A significant increase in the prison population is assumed in the Financial Memorandum of the Explanatory Notes. The increase will lead to serious overcrowding, at least in the short term. Overcrowding will adversely affect positive work in prison to reduce the level of risk of those being released.

Recalibration

The Sentencing Commission saw "the need to avoid an increase in the length of time most offenders serve in custody". They proposed that sentences should be "recalibrated" to ensure that this did not happen.

The Executive's proposals make no mention of recalibration or any change to total sentence length to take account of the new release arrangements.

It will not be for the Court but for the Parole Board to add to the custody part to take account of risk assessment. We would, therefore, like to see in statute that sentencers, unlike in the current system, would have to put early release out of their mind, so as make the custody part the minimum required for punishment and deterrence.

Sentences of under 15 days

Under the proposals all those in this category would serve the full sentence in custody. This means a number, albeit relatively small (no exact figure is available from current prison statistics), in the daily prison population would serve double the time currently served and this would double their proportion of the daily prison population.

Fine defaulters

It is proposed that all fine defaulters will serve their whole sentence in custody. The average sentence is 11 days, and their numbers in the daily prison population (54 in 2005/06) will double. The cost of this is will be an average of £1205 per prisoner while the size of the average fine is £278.

If we are seeking to reduce harm, why double the length of sentence of those whose original crime was one the court did not deem worthy of a custodial sentence and who are being imprisoned in lieu of a monetary penalty with no risk factor?

Breaches and recalls

All released after a sentence of over 15 days would be on licence. It is well known from research (Fergus McNeil) and from experience in the Drug Court, that the path to desistance from re-offending is a process not an event. It is inevitable that there would be recalls for breaches of the licence. If there are more prisoners on licence, there will be more on recall. As the numbers on licence would be large, the numbers recalled to prison would also be large

Although the Parole Board may then instruct that some of those recalled are released, this would take time. So, not only would the numbers of recall be higher than at present but also all recalls would add to the prisoner population even if the Parole Board deemed the recall unnecessary.

Breaches have to be “serious” to merit recall. Who would define “serious”?

The proposals will not address victims’ interests adequately.

The only additional measure mentioned in this regard, is new representation on the Parole Board of someone with knowledge and experience of the way and degree to which offences affect victims.

The proposed inappropriate allocation of resources would be counter productive in reducing re-offending in the community as a whole, and, therefore, not in the interest of victims.

While we welcome the proposals that the Court should be clear about the nature of the custody and community parts of the sentence, the complexity would make it difficult for the Court to spell this out in such a way that victims and others could understand what is going to happen to the offender. [See Annex 1 “Explaining the proposed new sentencing Framework.]

ANNEX 1 - EXPLAINING THE PROPOSED NEW SENTENCING FRAMEWORK

Imprisonment for Fine Default or Contempt of Court (i.e. not direct sentence)

You will serve **x** days in custody. You will serve this period in full unless your release date falls on a weekend in which case you will be released on the preceding Friday or if it falls on a public holiday you will be released on the preceding working day.

Sentences of up to 14 Days

You will serve this sentence in full unless your release date falls on a weekend in which case you will be released on the preceding Friday or if it falls on a public holiday you will be released on the preceding working day. You will not be subject to any licence on release.

Determinate Sentences of 15 Days and Over

- You are sentenced to **x** days/weeks/months/years in custody (prison /detention)
- Your sentence will have a custody part and a community part
- The custody part will be at least half of **x** but not more than three quarters of **x**
- However, in your (**some cases**), because of the serious nature of the offence and your previous record, I am setting the minimum custody part at two thirds (or other period less than three quarters) of the full sentence.
- When you are in custody you will be assessed as to the risk you might pose on release. If it is thought that you would pose serious risk, your case will be referred to The Parole Board which will decide whether or not you need to be detained beyond half of the custody part I have imposed. If they do not think there is such risk, you will be released when you have served half of **x.** (This should happen before your custody part has expired.) If they think there is such risk, you will be further detained and a review date set by the Parole Board. At the review your release date will be set or a further review date set. You will not be detained in custody longer than three quarters of **x**.
- **(sentences where x is 3 months or more)** Once you have served at least 4 weeks or one quarter of **x** you may be assessed as suitable for earlier than normal release provided that is not more than 135 days before your prison part would normally expire. If you are given early release under this curfew condition scheme you would be subject to electronic monitoring for at least 9 hours per day. That is, you would be required not to leave your home or other place or not to go to some place.
- When your prison part has been served, you will be released on licence to serve the community part of your sentence, that is until your full sentence has expired. That is provided that you have no other sentences whose prison part has not been served in full.
- Your licence will contain the following conditions……
- **(sentences of 6 months or more)** You will be subject to supervision by a social worker in addition to the other conditions I have imposed.
- These licence conditions may be changed if the circumstances warrant it.
- Your licence may be revoked and you recalled to prison if you breach the conditions of your licence and it is thought to be in the public interest to do so. If that happens your case will be referred to the Parole Board which will decide whether and for how long you should be detained – this could be as long as the end of your full sentence.
- **(Extended Sentences)** Because I consider that you may pose a serious risk to the community on release, you will be subject to the following extended period of licence and supervision on release…...

SUBMISSION FROM CYRUS TATA, CO-DIRECTOR, CENTRE FOR SENTENCING RESEARCH, LAW DEPARTMENT, STRATHCLYDE UNIVERSITY

I am grateful for the invitation to submit written and oral evidence on the Bill. I will restrict my submission to Parts 1 and 2 of the Bill (ie sentencing and sentence management arrangements).

Overall Aims of the Bill

Background documentation[1] appears to suggest that the two most important aims:

- To provide for a more transparent sentencing regime which will improve public confidence in the criminal justice system
- To increase public protection by ending automatic, unconditional release from custody

My submission therefore examines these aims and evaluates the extent to which the Bill can be expected to realise these aims.

Setting of the 'Custody Part' in the proposed combined structure (section 6)

Section 6 of the Bill provides that the custody part must be a minimum of 50% of the overall sentence, but that this may be increased to 75% if the individual sentencing judge considers it appropriate. *What is the rationale for allowing individual sentencers to increase the custody element to 75%?* None of the accompanying documentation provides an explanation.

Section 6(4) provides that an individual sentencer may increase the custody element to 75% in view of: the seriousness of the offence/s; previous convictions; the timing and nature of a guilty plea. *Yet all three of these criteria currently form (and will continue to form) the basis of determining the overall headline sentence. Why should individual sentencers now be asked to make the same assessment twice?* At best this seems to provide for unnecessary duplication and confusion. However it also highlights a key contradiction in the Bill about the purpose of supervision, to which I will now turn.

"Public protection is of paramount importance."[2] This is why the new combined structure is proposed for all custodial sentences of 15 days or more: to be subject to licence in the community. Community supervision and licence conditions are intended to reduce the risk of re-offending both during the community part of the sentence and after the expiration of the sentence and thereby increase public protection. *Yet the proposal in section 6 to allow individual sentencers, in effect, to decrease to 25% the period of community supervision will undermine efforts to increase public protection*. It is likely that practices will vary between individual sentencers dealing with substantively similar cases.

The Bill proposes that individual sentencers should be allowed to increase the custody part of a sentence to up to 75% because they wish, in effect, to punish the offender twice: once in terms of the overall sentence and again by limiting the time for structured community supervision and support. *Yet ironically, in many of those very cases where the offender and the community will most need community supervision the community element will have been reduced*. Unlike indeterminate life sentenced prisoners, determinate sentenced prisoners cannot be held or subject to licence beyond 100% of their sentence. Therefore, by allowing individual sentencers to reduce the community part to just 25% it will in fact make management and supervision of offenders both more difficult and shorter. Thus, enabling individual sentencers, to reduce the community element to 25% will undermine the very reason for ending automatic unconditional release: public protection, which is claimed to be of "paramount importance".

I would recommend, therefore, that the Bill should not enable individual sentencers to vary the custody percentage for determinate sentenced cases. The purposes of retribution, deterrence,

[1] Most particularly: Scottish Executive (2006) *Release and post Custody Management of Offenders* (June); the Bill's *Explanatory Notes* and *Policy Memorandum*; and the Sentencing Commission's report (November 2003)

[2] *Policy Memorandum*, p2 paragraph 7.

culpability and seriousness can be (and are) achieved more transparently through the setting of the appropriate headline sentence.

Can the proposed combined structure of punishment and community licence be sustained in cases of shorter-sentenced persons ?

The Bill has attempted to import the rationale behind indeterminate life sentenced prisoners to all prisoners serving custodial sentences of 15 days or more. However, the crucial difference is that this Bill is dealing with prisoners sentenced to determinate terms, the vast bulk of whom are sentenced by the summary courts to short periods of custody.

However, the tough, 'tailored' individual community provisions which are trumpeted by advocates of this proposal are simply unsustainable in the vast bulk of sentenced cases. There will be enormous practical difficulties in carrying out meaningful community work for individuals sentenced to custody of short-terms. In any case, because most convicted persons sentenced to short terms of imprisonment do not represent a serious danger to the public (often having been sent to prison to short terms partly of repeat offending at summary level) close supervision may not always be necessary. Indeed, the accompanying policy documentation appears to recognise that the Executive's grander rhetoric will not be achievable. For example, we learn that the "concept of 'supervision' as it is currently understood, with intensive intervention by qualified social workers, will be reserved for those whose risk requires such intervention."[3] Similarly, although risk assessment is trumpeted as a key change, meaningful risk assessment will not be practicable for shorter sentenced prisoners. Therefore, the Bill, as presently constituted, will not achieve the goal of sentences "managed in a tailored way to the risk of harm posed by individual offenders and to the scope of rehabilitating all offenders."[4] In truth, as officials appear to have quietly recognised, this will not be possible for most short-sentenced prisoners. While this realism is welcome, it gives rise to a serious problem of clarity and transparency.

Will licence conditions for most short-sentenced convicted persons come to be seen, in most cases, as another example of a lack of transparency in sentencing?

A central aim of the Bill is a "transparent sentencing regime which will improve public confidence…"[5]. This appears to have long been a key driver behind the proposed changes. However, (as explained above) at least in the case of most short-sentenced prisoners, licence conditions will not provide for substantive work with individual offenders. *Licences for short-term sentenced persons may well develop a reputation as technical, even meaningless*. By setting unrealistic expectations that all 15 day plus-sentenced persons will be 'on licence', is the Bill only going to create further cynicism when it becomes apparent that (in most cases) being on licence does not fulfil the promise to address offending behaviour?

The Consequences on the size of the Prison Population will undermine the overall aim of enhancing long term public safety

The overall consequences on the prison population of this Bill (and when combined with other proposals to increase maximum sentences which can be passed by the Summary Sheriff Courts[6]) should be expected to be very large. *Over-crowding in prisons and especially the high influx of persons sentenced to relatively short sentences are two of the most important factors which undermine rehabilitative work in prisons*. Furthermore, even if one could imagine a day when prison over-crowding is eradicated, we should recall that incarceration is supposed to be a last resort for the purposes of protecting the public, not as an (extremely expensive) way of accessing social and educational services. Such services can be provided much more effectively (and less expensively) in the community, and without breaking social and familial ties which is a normal consequence of incarceration.

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[3] Scottish Executive (2006) *Release and post Custody Management of Offenders* (June), p8, paragraph 18

[4] *Policy Memorandum*, p2 paragraph 7.

[5] *Policy Memorandum*, p2, paragraph 8

[6] Criminal Proceedings (Scotland) Bill section 33

Given the foreseeable impact of the Bill, is there a need for sentencing practices to be adjusted ('recalibration)?

The Sentencing Commission's Report had proposed that, given the net effect of its proposals on custodial sentencing levels, sentences will need to be "recalibrated". Section 6 of the Bill will allow individual sentencers to set the same headline/official sentence (for example 18 months) as they would have before the Bill. Currently, it is understood that the sentenced person would be released after 9 months (50%). However, section 6 will allow the individual sentencer to pass the same headline/official sentence (18 months) for the same case, but to increase the effective period in custody to 75% (in this example 12 months). Thus, the effective (or real) custodial sentence will be 3 months longer, although the official/headline sentence remains the same. *As well as issues of proportionality, this change in effective custodial terms will undoubtedly lead to a very significant rise in the prison population*. The Sentencing Commission recommended that sentencers should be expected to adjust their sentencing practices accordingly, but the Bill omits any such provision. *What is the rationale for omitting recalibration?*

The 15 Day Rule will lead to Anomalies and Proportionality issues

The new scheme is proposed to apply to persons sentenced to custody for 15 days or more. This will, in effect, lead to inequality of treatment and perverse results. An individual sentencer may pass a sentence of 14 days which will mean that the whole of that time must be served in custody. On the other hand, if a sentence of 15 days is passed it will, in effect, mean only 50%-75% (8-11 days) is to be served in custody. Likewise a person sentenced to 14 days in custody will often serve more time in custody than a person given a supposedly ''longer' headline sentence of 21 days. *One could imagine that such a person sentenced to 14 days will feel aggrieved and regard this as unequal and disproportionate treatment*.

Scottish Parliament

Justice 2 Committee

Tuesday 14 November 2006

[THE CONVENER *opened the meeting at 14:06*]

Custodial Sentences and Weapons (Scotland) Bill: Stage 1

14:07

The Convener: Agenda item 3 is our third evidence session on the Custodial Sentences and Weapons (Scotland) Bill.

I welcome our first panel: Neil Paterson, who is director of operations for Victim Support Scotland; and Susan Matheson and Donald Dickie, who are from the Scottish Consortium on Crime and Criminal Justice. We have received an apology from the chief executive of Victim Support Scotland, David McKenna, who is unwell. In his absence, I advise Neil Paterson that, if questions are asked that he feels he cannot answer appropriately, he may provide further written evidence to the committee as quickly as possible after the meeting.

I will start the questions, the first of which is primarily for Victim Support Scotland. One of the bill's main aims is to increase transparency in the sentencing process and to make sentencing more intelligible to the wider public, offenders and victims. Do the proposed measures represent significant progress from the current position?

Neil Paterson (Victim Support Scotland): There is a short answer and a long answer to that question. The short answer is that it might. The long answer is that such progress will be contingent on the way in which the bill is put into practice, as the issue is not so much the content, nature and principles of the bill as how it is operated if it becomes law.

Let me make two observations. On measures to increase transparency in sentencing, the bill contains a number of positive developments, not least of which is the combination of custodial sentences with community sentences. That is provided within the context of a set of principles that I think the public will find easier to comprehend than those under which the present system operates. However, if victims are to understand how the system works, the sentencer will have to give in court an appropriate and clear explanation of how the custody and community components of the sentence will work.

My other observation relates to broader areas of Government policy, and is on the way in which sentencing decisions are communicated to victims and whether victims can choose to receive information on the progress of the offender's sentence throughout their time in custody. The committee might be aware that the victim notification scheme was placed on a statutory footing by previous criminal justice legislation. It

enables victims in cases where the offender is sentenced to more than four years in custody to opt to receive certain pieces of critical information throughout the offender's sentence. That information includes, for example, how long a period of custody they are expected to serve and whether they are being considered for parole. If they are considered for parole, the victim can make a submission to the Parole Board for Scotland for its consideration.

The victim notification scheme applies where the offender is sentenced to four years or more. Given that the Custodial Sentences and Weapons (Scotland) Bill will fundamentally alter the sentencing regime, it would have been prudent for the Executive to equalise the time periods in the bill and the victim notification scheme. However, the Executive omitted to do that. If the time periods were equalised, victims would have more confidence in the system and the system would have the transparency that is mentioned in the policy memorandum.

The Convener: I ask you to expand on a couple of points. Your last point was clear—victims wish to be involved in the process. However, you mentioned the form of the information that they receive. Will you share your thoughts on that?

Neil Paterson: This morning, I tried to find out how the information is delivered at present, but the details were not available to me, nor was I able to glean from those who work for me or my colleagues any details about how well the information is received. However, people talk all the time about the need for information. They want to receive information about the progress of the case after disposal and particularly in the run-up to the prisoner's release. The thing about which people complain to us more than anything else is meeting the offender in the community after their release. Often, the victim has not had the opportunity to prepare themselves for that.

The Convener: I take it that your organisation is seeking clarity from the Executive about how the process will operate.

Neil Paterson: Yes. We want the Executive to extend the entry point for the victim notification scheme downwards from four years, so that it is equivalent to the sentencing proposals in the bill. The entry points should be the same.

Susan Matheson (Scottish Consortium on Crime and Criminal Justice): We agree that it is a positive step for sentences to have a custody part and a community part and for the courts to explain that, but we think that the explanation will be too complex. Donald Dickie tried to work out what the court might have to say—the information has been circulated to committee members—and there is so much information that it will be impossible. We are concerned that, when the sentence is delivered, the victim will not know what is going to happen to the offender. The bill aims to make the system clearer, but it will not achieve that.

Jackie Baillie (Dumbarton) (Lab): I ask Neil Paterson to clarify what he said about entry points. What are they, precisely?

14:15

Neil Paterson: At present, when someone is given a custodial sentence of four years or more their victim is entitled to opt into a process whereby they receive key pieces of information about the offender as they progress through their sentence. At present, the bar is set very high. The committee might be interested to know that the equivalent entry point in England and Wales is a sentence of 12 months or more.

The Criminal Justice (Scotland) Act 2003 makes provision for the Scottish ministers to alter the entry point without resort to primary legislation. That provision has been lying fallow on the statute book. This is an appropriate time to bring the entry point down from four years to something like 12 months or more. That is particularly important if the Executive wants to fulfil its objective of putting in place a transparent sentencing system. That would address some of the concerns that Sue Matheson raised about the ability of victims to understand how a disposal is reached in open court. They would get the information at a later point.

Jackie Baillie: You mentioned entry points in the context of the bill and picked a figure of 12 months from the English legislation. Is that an arbitrary figure in the context of the bill, or do you have a particular hook in mind when it comes to the timeframes?

Neil Paterson: If Parliament is minded to pass the bill unamended and introduce a new community-based, custody-based sentencing regime for sentences of 15 days or more, that will be the appropriate point at which to set the entry point for victim notification. The two processes should be aligned.

The Convener: Will the bill enhance victims' sense that their needs, wishes and views are being taken more seriously in sentencing and managing offenders?

Neil Paterson: One of the bill's specific proposals is to extend the membership of the Parole Board to include a representative who can bring experience of the extent to which people released on parole might offend and of the impact of reoffending on victims. I have not been party to any of the Parole Board's decisions, except in a

previous life, when I was a social worker. It seems axiomatic that including such a perspective in the Parole Board's deliberations is positive and will be welcomed by victims and witnesses.

That aside, there are few specific policy commitments in the bill that I can confidently say will increase victims' confidence. There are a number of related policy initiatives. For example, there is the work of community justice authorities, which might, in tandem with the bill, have an impact further down the line in increasing victims' and witnesses' confidence in the system. However, the bill itself is relatively mute in that respect.

The Convener: Will the bill better protect victims and potential victims?

Neil Paterson: Potentially. We welcome the more robust set of mechanisms that are anticipated to be used to undertake risk assessments of prisoners before they are released into the community, which will be reassuring to victims and witnesses. The bill is a step forward in that respect, certainly compared with the previous system, under which many people were released into the community after serving 50 per cent of their sentence without any supervision or conditions attached.

The Convener: Do you have any thoughts about how the victims can be informed without the risk of a vigilante approach developing, as has happened in the past? You feel that there should be a better process, which links to your initial response.

Neil Paterson: That is one component, which relates specifically to victims' cases. The system needs to do more to build confidence among victims and witnesses generally.

I am not prone to bringing evidence from south of the border to Scottish justice committees, but a lot more innovative work has been done to demystify the workings of criminal justice in England and Wales. This week is inside justice week there, during which a whole range of imaginative initiatives are taking place. Communities are being allowed to see how courts work, how the Crown Prosecution Service works and so on. There has not been anything of that nature in Scotland. There is a need for the system as a whole to be more transparent in engaging with communities to build confidence in how the system works. It is not just sentencing information that is required, but a wider process of engagement.

The Convener: Does your organisation believe that that process should take place concurrently with consideration of the bill?

Neil Paterson: Yes, that would be helpful.

Jackie Baillie: I have a follow-up question. I hate to push you on timescales, but I will do so. Do you regard it as proportionate in terms of both resources and practicality to have victim notification for sentences of 15 days or more, for example, given that they may spend only 11 days in custody?

Neil Paterson: I am not competent to comment on the resource implications of such a measure. However, if resources are available for custody and community sentences, it is not unreasonable to expect that they could also be made available to ensure that victims and witnesses are informed of the outcomes of court cases that involve them.

Jackie Baillie: That is interesting.

Maureen Macmillan (Highlands and Islands) (Lab): Does victim notification happen only if victims request it?

Neil Paterson *indicated agreement*.

Maureen Macmillan: Presumably there is no problem if the offence is not terribly serious. Your concern is with more serious offences.

Neil Paterson: That is a good point. I was not around when the four-year threshold was introduced, but I think that it was designed to address some of Jackie Baillie's observations on proportionality. Our experience is that the threshold is too high and that more people need to be included in the system. Maureen Macmillan is right to say that not everyone will choose to avail themselves of victim notification. I would like to have a sense of how many people who are potentially eligible to make use of victim notification have done so but, unfortunately, no such figures are available from the Executive, as far as I am aware. If we had that information, we might be able to make a better-informed set of decisions about the level of uptake that might ensue from an extension of victim notification.

Jackie Baillie: Part 1 of the bill proposes significant changes to the workings of the Parole Board, including reducing the number of Parole Board members who are involved in decision making from three to two. What are your views on those changes?

Susan Matheson: We are not happy with the proposal to drop the number to two. If three people are involved, a broader range of experience is brought to the table. At the moment, decisions do not have to be unanimous, but they will have to be if only two Parole Board members are involved. We do not think that the proposal will lead to better decisions.

Neil Paterson: We concur.

Jackie Baillie: My next question is directed at Neil Paterson. Are there particular types of

victim—for example, children or victims of domestic abuse—whom the bill will assist or frustrate?

Neil Paterson: It is difficult to say, but potentially the answer is yes. It is probably helpful to focus on the risk assessment process and putting in place robust arrangements to support and supervise offenders after they are released back into the community. Most people will welcome the fact that arrangements are in place to capture most people who are released from prison, but in order to make those arrangements work appropriate resources must be made available to the people who undertake assessments. The organisation that I represent will take an interest in that as the legislation unfolds. It seems that, potentially, the risk assessment net will be cast far more widely than has been the case to date. If the processes are to work properly, it is important that the necessary resources are made available.

Those issues apply to children and victims of domestic abuse. It is necessary to ensure that conditions relating to non-harassment and other aspects of behaviour that will reassure victims in such cases are attached to offenders' supervision requirements.

Colin Fox (Lothians) (SSP): It has been suggested that, if the bill is enacted, it could increase the prison population by up to 1,100 people, at a cost of £40 million to £45 million a year. The overarching policy objective of the bill is to protect the public in communities. Does the evidence suggest that the investment is likely to produce significant improvements for victims and communities?

Susan Matheson: We are concerned about the possible rise in the prison population. It has been suggested that there will be a rise up to eastern European levels at a time when the crime rate is falling. Risk assessments and the larger number of people who will be incarcerated will use up resources that could be used much more effectively and give much better value for money. They could be spent on supervision programmes, throughcare, work in the community and essential work in the criminal justice system to reduce reoffending. The bill will lead to resources being absorbed when they could be spent more effectively elsewhere in the system.

Colin Fox: Do the other panellists concur?

Donald Dickie (Scottish Consortium on Crime and Criminal Justice): Yes, absolutely. We support the principle that risk assessment should be at the heart of the strategy, but things have gone wrong. Risk assessment for people on licence or for people who might be recalled is disproportionate. There could also be an increase in the length of sentences—and sentences have already been getting longer for many years. Taken together, all such factors would increase the prison population, and nobody has ever established a strong correlation, let alone a causal link, between increasing the prison population and reducing crime. There may be some tentative links, but there is nothing firm.

Colin Fox: I have further questions but I wonder whether Mr Paterson would like a bite at the first one.

Neil Paterson: Our position does not differ markedly from Sue Matheson's or Donald Dickie's. I am not suggesting that this is happening, but we should be cautious about suggesting that victims will automatically want longer and more severe sentences. Most research tells us that what victims want is for offenders not to reoffend. We should divert resources towards the measures that are most likely to achieve that. However, we also have to acknowledge that, in certain cases, periods of custody are appropriate for the purposes of deterrence and punishment. The balance has to be appropriate.

Colin Fox: Is the figure of 1,100 people about right? I was interested in your answer, Mr Dickie. Do you expect that, if longer custodial sentences are available, they will be handed out? In other words, do you expect that people will indeed spend 75 per cent of their sentence behind bars, or is that court disposal just a possible disposal rather than a likely disposal?

Donald Dickie: That could be another problem with the bill. With any criminal justice legislation, it is difficult to predict what will happen.

The Sentencing Commission for Scotland thinks that, whatever happens, changes to statute law should be introduced in such a way as to avoid an increase in the number of offenders going to prison. The commission has suggested that some form of recalibration should be built into statute or regulations to guide sentencers. In the new system, sentencers will be confined to considerations of punishment and deterrence. In the present system, they can take account of early-release arrangements, but they will be considered by the Parole Board.

It is difficult to know what will happen, but there is certainly a risk that more people will go to prison. As I am sure you know, the Executive's accompanying documentation anticipates that more people will be recalled and that more people will serve longer sentences. The figure that you gave is not a shot in the dark, but quite how high the figure will be I do not know.

Another possible factor in the risk assessment process is false positives. In other words, when people are asked to assess risk they sometimes

overestimate it through a fear of underestimating it, so not many people are classed as low risk. Some are classed as medium risk, but there is a temptation to classify people as high risk. Given the effort and resources required to carry out the risk assessment of thousands of people serving sentences of 15 days or more, we are not convinced that it can be done in any meaningful way. It will certainly not be the kind of risk assessment of high-risk offenders that we carry out currently.

14:30

Colin Fox: What could we get for £44 million if we took the path of supervision, community orders and non-custodial disposals? What impact will a proposal that could increase prisoner numbers by 1,100 have on prison figures, which are currently at record levels?

Susan Matheson: Having a lot more investment in throughcare and making available to everyone coming out of prison the model of the pathfinder community links centre here in Edinburgh would have a big impact on reducing reoffending rates, because it would be possible to work with people and challenge them and assist them to get accommodation, rebuild relationships, take positive opportunities for learning and employment, and take responsibility and make amends—all the things that we know lead to people eventually stopping reoffending. It would be positive if more resources could be put into that, as well as drug and alcohol treatment programmes.

Colin Fox: What pressure will be put on the prison estate if we add 1,100 prisoners to the current prison population?

Susan Matheson: That is a good question. We saw in the recent annual report of HM chief inspector of prisons for Scotland how damaging overcrowding is. We are overcrowded now, so if the 15-day threshold is introduced there will be substantial overcrowding, which will have serious consequences for prisons' ability to manage and absorb resources that would provide far better value for money if they were spent elsewhere.

Colin Fox: I take it that the changes will have a deleterious effect on programmes that are aimed at rehabilitating prisoners, given that we will be keeping people in custody and doing little else. Is that a fair comment?

Donald Dickie: Yes. Given that we are a community safety organisation, we believe that a considerable number of prisoners need to remain in prison for lengthy periods and, during their sentence, need to receive focused and targeted interventions that have some chance of reducing the likelihood of their reoffending on release. The more churn or throughput of prisoners there is—with people serving 30 or 60 days then being recalled—the fewer of them will benefit from the sentence and the more resources will be diverted from focusing on those who should get the attention in the interests of the wider community.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): My question is along the same lines. What are your thoughts on the alternative approach that we should phase out sentencing individuals to less than three months, other than on public safety grounds or where there is no alternative?

Susan Matheson: We have said previously that we would like sentences of less than six months to be phased out, but that would have to be written tightly into legislation so that people would not just be given longer sentences. We see little value in short sentences, and there is consensus in the community that they do not represent good use of resources. The Scottish Prison Service itself says not to send it people for less than a year, because it cannot do anything constructive with them in that time. However, that does not mean that it wants people to be given longer sentences.

Jeremy Purvis: I put the same question to Victim Support Scotland. How would victims respond to the proposal, given that it might be considered to be soft on crime?

Neil Paterson: There are some dangers in assuming that they would respond in the same way. Research experience and our practice tell us that people want folk to have prison sentences where appropriate. However, victims' views are often far less punitive than people in the media assume they are. There is also a consistent theme about people getting help to stop reoffending and creating more victims. It is not that community disposals cannot be sold to people, but that doing so requires someone to engage actively and go out and explain how things work, in a way that does not happen currently. Such communications tend to happen through the media, which inevitably means that there is a degree of distortion. However, I do not think that it is inimical to victims' interest.

Jeremy Purvis: Convener, I would like to ask about victim notification, although it is not part of the bill.

The Convener: Please keep it very brief.

Jeremy Purvis: It strikes me that victim notification applies only to the victims of those who have received a custodial sentence. Following on from Mr Paterson's response, would there not also be circumstances in which, although the offender is given a community sentence, the victim should get information about any programme that the offender might be part of? For example, an alcohol

programme could be a compulsory part of a community sentence. Would victims benefit from knowledge not just about the punishment that the offender has received but about any programme that they might attend to reduce their offending behaviour?

Neil Paterson: We tend to find that people's understanding of how community disposals work in practice is remarkably limited. That is not surprising because no one takes the trouble to explain the system to the world at large. You are right: extending the notification procedure is one component of practice that could be enhanced. People would welcome that, and it would be good for the credibility and legitimacy of the system.

Maureen Macmillan: Do sheriffs think that community disposals are robust enough? In the end, the sheriff does the sentencing, and I am aware that sheriffs seem to be disinclined to use community disposals.

Donald Dickie: There are peaks and troughs, but overall statistics suggest that sheriffs have confidence in community disposals. They might have criticisms about places where an offender's community service does not start soon enough, but overall the levels of use of community service and probation do not suggest that sheriffs do not have confidence in those disposals. The Social Work Inspection Agency interviews stakeholders in the criminal justice system, and when the agency inspects a local authority social work service, it asks sheriffs what they think of that service. The vast majority of the responses, which one can read in the agency's reports, are positive, by and large.

Maureen Macmillan: So why are all these people in prison for short sentences when they could have been given a community disposal?

Donald Dickie: That is more to do with the culture of this country and the expectation that it is somehow not a punishment if the offender does not actually go to prison. If we think about it, that is not very rational. Someone who is given probation for six months or a year has a lot of expectations placed on them. They are deprived of some of their free time and they are expected to do things and to turn up for work—they might never have worked before—when they are on community service. A short term of imprisonment might be unpleasant, but only for a short time, as the offender will be out again shortly and nothing will have been achieved. A short sentence is over in a short time, whereas a community disposal lasts longer and is also much less expensive.

Maureen Macmillan: That is interesting. I want to go on to ask about proportionality—

Susan Matheson: Could I add something first?

Maureen Macmillan: Of course.

Susan Matheson: Sheriffs get frustrated with the people who come before them time and again and wonder what they can do other than put those offenders in prison—and that is what they do, time and again. That does not work, but the sheriffs keep doing it. We would like sheriffs to use community sentences repeatedly, because we know from the drugs court and research by people around this table that a process has to be gone through before people desist from reoffending. We need to put in resources for throughcare and key workers, for example, to help people get over the initial period when they come out of prison so that they do not constantly appear before the sheriffs and take them to the point of frustration.

Maureen Macmillan: Presumably resources will be put into programmes for the supervision of prisoners following custodial sentences. Could those same programmes be used as alternatives to custody, or are you talking about something different?

Susan Matheson: Programmes have a place, but it is about more than that. It is about having somebody who can build a strong, professional relationship with the person, stick with them in a way that perhaps has not happened for them before and key them into other agencies that will help to ensure that all the basic issues that may underlie their offending, such as accommodation problems or not having a job, are addressed.

Maureen Macmillan: I want to ask about the difference between supervision and support. Someone who comes out of custody after a month will need different supervision or support from someone who comes out after three years. I presume that it would be inappropriate for someone who has served a short sentence for a fairly minor offence to receive a high level of supervision. Is there a concern about the proportionality of the response to such offenders?

Susan Matheson: The response depends on an offender's circumstances. Even those who have spent only a very short time in prison may have dislocated all their community connections. If they have lost their accommodation or if their relationship has broken up, they may be very likely to reoffend. Donald Dickie might want to add to that.

Donald Dickie: Sue Matheson is right about support. Supervision is where the proportionality aspect comes in. By and large, people who serve shorter sentences have committed less serious offences and are less likely to pose a serious risk of harm to the community on their release. Supervision is about holding the offender to account in the community and trying to ensure that they keep to the conditions that have been

imposed to attend drug rehabilitation programmes or whatever. Supervision is important, but a lot of offenders need the support that we have talked about to stay out of trouble. For example, they may need to do something about their drug habit.

Support and supervision go hand in hand, but the balance between them depends on the individual. A long-term offender might need a bit of supervision because of their history, but they might not necessarily need a lot of support. Some people seem to reintegrate easier than others, depending on their social skills and the support provided by their family. Each person must be assessed individually.

Maureen Macmillan: So it depends on the individual, but we could see support as a continuum, with supervision at the more serious end.

Donald Dickie: It would be reasonable to suggest that the more serious the offender and the greater the risk of harm suggested by the circumstances of the offence—which is what the bill is largely about—the more likely it is that intensive supervision will be required.

Maureen Macmillan: So you would focus your resources at the more serious end of the scale to protect the public from risk.

Donald Dickie: Yes. We are not against the principle of risk assessment—far from it—but we feel that the threshold could screw it all up, to put it bluntly, by putting resources in the wrong places and thereby depriving people who need more resources. For example, a threshold of six months would immediately take away from prison officers and social workers the burden of conducting risk assessments for several thousand offenders. We think that the figure is 7,000 or 8,000, although for statistical reasons we are not certain; the committee's advisers could probably give a more accurate figure than we can. It does not seem sensible to spend a lot of resources on people who are, almost by definition, not serious offenders and not likely to pose serious risk.

Maureen Macmillan: Are the offenders on short-term sentences not the ones who keep going in and out of prison?

Donald Dickie: There is a high risk of reoffending but not necessarily a high risk of harm—we distinguish between the two. I am sure that you are well aware that there is certainly no connection between short prison sentences and an immediate reduction in the rate of reoffending. The number of shorter-term offenders who are back in prison within two years is high.

Maureen Macmillan: So we should really be looking for community disposals for sentences of six months.

Donald Dickie: Or for even longer sentences. The situation depends on the individual, but if community disposals were used rather than custody for sentences of up to six months, there would certainly be an impact.

Maureen Macmillan: I am aware that criminal justice social workers currently supervise about 600 released prisoners in Scotland. The financial memorandum to the bill estimates that the number will increase to around 3,700. We have talked about the figures already. Do you think that criminal justice social workers and their voluntary sector partners will cope with that huge increase?

14:45

Donald Dickie: It is a huge increase. Even if the money was made available, there would still be the problem of recruiting suitable staff to do that work. There is a shortage of social workers, including criminal justice social workers. Social workers already struggle to fulfil all their statutory responsibilities. The reports of the Social Work Inspection Agency show that the situation is better in some places than in others, but all social workers have to work hard to achieve the national standards for regularity of contact, compliance and the numbers of people who are given the opportunity to go through a programme. Even without increasing the numbers under supervision, we could do better against those standards if there were more resources.

We in the voluntary sector play a supporting role. We are not responsible for supervision but, if there were suddenly a lot more people under supervision who needed the ancillary programmes that we provide, we would need more resources as well.

Maureen Macmillan: Does the bill sit well with the Management of Offenders etc (Scotland) Act 2005? Do the two pieces of legislation mesh together quite well?

Susan Matheson: I do not think that they do because, as we said earlier, resources will be diverted into assessing risk for almost all prisoners. The increase in prisoner numbers will also absorb huge amounts of resources in a way that will not lead to a reduction in reoffending.

Jeremy Purvis: I want to move on to the issue of offenders who are released on licence. If I understand the submission correctly—this question is addressed primarily to Mr Paterson—Victim Support Scotland believes that, when an offender is serving the community part of a sentence, there should be a zero-tolerance approach in relation to the revocation of the licence. What sort of behaviour would an offender have to display for the licence to be revoked and the person returned to custody?

Neil Paterson: That is difficult. I do not claim to have particular competency in that area, but the bill basically sets out that it will be possible to revoke the licence if the offender causes serious harm to members of the public. Clearly, reoffending is one aspect that needs to be taken into account, but there are others.

For us, the issue is how a community or victim is made aware of the conditions attached to the licence. If the person on licence displays threatening behaviour, the community or victim needs to be able to communicate with the authorities so that the potential for the licence to be revoked can be activated. That will not happen unless people are aware of what the licence conditions are. For us, the issue is less about zero tolerance and more about ensuring that people are aware of the conditions that are attached to a person's release—if, indeed, it is appropriate for them to know that.

Jeremy Purvis: Do other members of the panel have a view about when licences should be revoked and the conditions under which offenders should be released? If the conditions for an offender's release include compulsory attendance on a programme—for example, the throughcare programme that we discussed previously—should there be some flexibility, such as a warning system, if the person does not fulfil the conditions, or should recall to custody be automatic?

Donald Dickie: I think that making return to custody automatic would create a lot of problems. As I remember, when we had young offender licences a few years ago, automatic recall proved to be impossible to implement because the numbers were too great. Many short-term offenders are repeat offenders who go through the revolving door. To revoke the licence and recall the offender to custody on every occasion would be pretty unproductive. The recall would be purely punitive and would not reduce reoffending. However, I think that the bill suggests that the offender should be recalled to custody if there is a breach of licence conditions and it is thought to be in the public interest to recall them.

Jeremy Purvis: I think that the bill provides for recall to custody if there is concern about reoffending or risk of harm to the public.

Donald Dickie: If there is evidence that serious harm to the public will occur, a person should be recalled, but automatic recall should not happen for minor breaches. Let us face it: to be of good behaviour is likely to be a standard condition. Any criminal offence is, by definition, not good behaviour. If someone who committed an assault went on to commit a road traffic offence, it would not be proportionate to recall them on that basis.

Jeremy Purvis: My other question has been answered. I am satisfied with that.

Jackie Baillie: My questions are to Susan Matheson and Donald Dickie. The Scottish Executive has said that local authorities may choose to commission from voluntary organisations all or part of the supervision of an offender's licence. Should local authorities come knocking at your door, does the voluntary sector have the capacity to deal with that? Do you have enough suitably qualified and skilled staff? If that is a problem, can you recruit staff in the short to medium term?

Susan Matheson: It is difficult to answer that. We certainly do not have enough staff. When we recruit, we have a strong pool of candidates from which we can select. We rarely look for people with social work qualifications. Some people have them, but people can come to us with a broad range of experience and qualifications. In that sense, we may have more choice than statutory local authority departments.

The volume is so huge that it is difficult to know whether we could cope with the numbers, although we can cope with the nature of the work. At present, the voluntary sector manages some of the most serious high-risk people in the community. We can do what needs to be done at all levels. However, we are not sure whether we can recruit enough staff. That is one reason why we think that raising the threshold from 15 days to six, 12 or 24 months is key to making the whole bill work. The huge numbers that are intended to be dealt with and the amount of money that will be spent on bricks and mortar will mean that resources are not available to give the voluntary sector the money to recruit people.

Donald Dickie: We must do much of the training of our recruits ourselves. They are not qualified social workers, because they do not undertake statutory functions. We take people who may come from other welfare or health backgrounds or people such as ex-prison officers and ex-police officers. A wide variety of people comes forward, but we always struggle to have enough resources for training, so we would need a lot of help.

Jackie Baillie: That is helpful to know.

We talked about the efficacy of the approach to risk assessment, which would be continuous throughout the sentencing process. I will ask a slightly different question. How confident are you that current risk assessment tools and professional skills are sufficiently developed to allow properly informed decision making?

Susan Matheson: I ask Donald Dickie to answer, as he has experience of those tools.

Donald Dickie: Progress is being made all the time. In fairness, a lot of effort and resources have been put in. However, from a practice point of view—perhaps other experts who have more knowledge than I have could comment on this—I think from seeing social workers conduct risk assessments that there is still a long way to go. Some of the tools are static measures—they depend entirely on what has gone before. We are less clever at reliably predicting what individuals will do. I doubt whether we will ever have something that is 100 per cent sure. However, the tools are improving.

Doing risk assessment properly is time consuming. Even a relatively unsophisticated assessment takes up social workers' time, and social workers need to be trained in it. Risk assessment is resource hungry. That is behind our concern that an attempt will be made to risk assess too many people. Within existing resources, improvement has been made with the Risk Management Authority's help. A lot of people are putting a lot of effort into that. We may obtain tools that are better at assessing the dynamic features, but doing that will take time and resources. However good the tools become, we will still need people who can use them well.

Maureen Macmillan: Will the provision to regulate knife and sword sales be effective in reducing violent crime, or can you suggest any alternatives that would help to prevent people—mostly young males—from carrying knives and using them for violence?

Susan Matheson: That is a crucial issue, but as the consortium has focused more on part 2 of the bill, we do not have a view on it.

Neil Paterson: We have limited experience on the issue, but we welcome the proposal for a more robust registration system. I will confine our comments to that.

The Convener: I thank the witnesses for coming and for their evidence. As I said, if you have any short comments to add, I ask you to give them directly to the clerks in the next few days.

I welcome our next panel of witnesses: Cyrus Tata, the co-director of the centre for sentencing research at the University of Strathclyde's law school; Richard Sparks, the professor of criminology at the University of Edinburgh's school of law; and Bill Whyte, the director of the criminal justice social work development centre. I thank them for coming.

I will begin the questioning on the custodial sentences provisions. My first question is primarily for Mr Tata. One of the bill's main aims is to enhance transparency in and public understanding of the sentencing process. Will the bill improve public confidence in the criminal justice system, in either the short or the long term?

Cyrus Tata (University of Strathclyde): On balance, no, although one or two aspects will be helpful with regard to transparency. The issue is crucial, because research into public attitudes and knowledge highlights the transparency issue, within which the apparent disjuncture between the sentences that are announced and the time served is one of the key areas and sources of public cynicism. For sure, we have to do something about that. The one plus point in the bill is that the courts will be asked to state, if they can, what practical effect a sentence will have, including information such as the earliest point of release. However, we do not need a bill to do that; that could be done now through a sentence guideline judgment. We certainly do not need the rest of the bill to ensure that statements are given in open court on exactly how sentences will be served and the earliest date of release.

At the broadest point, we must consider the ultimate source of the disjuncture and the driver behind the lack of transparency. Although there are good, principled reasons to do with public safety for having supervision after a period of custody, historically, the main driver for release has been pragmatic—it has been a way in which to try to relieve the pressure on the prison population.

Officials have sought to expand and tinker with back-door arrangements about who is released from custody while regarding what goes into prison through the front door as taboo. To use an analogy, the bath is overflowing. What are we trying to do? We are trying to fiddle around with the size of the overflow system; we are not looking at what goes into the bath in the first place. Does everyone who is there need to be there? Why are we still sending fine defaulters to prison? More than half the daily admissions to prison are fine defaulters. Do they need to be there? Is a public safety issue involved? The same questions could be asked about a range of offenders in the context of our concerns about repeat but low-level offending—not violent or sexual offending, but repeat offending—which you have just heard about. That is the main issue.

15:00

I will turn to some more detailed points, but if you want to do something about clarity and transparency, you must think about sentencing. The bill does not deal with sentencing; it deals with the management of sentences. It regards the structure of sentencing as taboo, for some reason. Of course, Parliaments should not tell individual sentencers what sentences to pass in individual cases—that is quite right. Nevertheless, it is for

the Parliament to think about the structure of sentencing and to think rationally about how we can use the precious resource of custody and whether we are using it wisely.

Overall, the bill will not assist in creating transparency and clarity; in fact, it will do the reverse. We are reinventing the mistakes of the past in that respect. The advocates of the bill claim that everyone who is sentenced to a period of 15 or more days in custody—why we have that cut-off point beats me—will be subject to restriction and licence. The public is being told that we are going to get tough on everyone now, and that when people come out of prison they will be watched and under restriction. However, as you have heard, that simply is not possible in practice—that is a fantasy with regard to the vast bulk of prisoners who are released from prison.

You will have noted that, in the policy memorandum, officials have quietly recognised that and have said that, in practice, it will not be possible to do any kind of meaningful licence work with people who are sentenced to periods of six months or less. I suggest that six months is an underestimate; I think that, in practice, the sentences involved will be longer than that. It will be difficult to do meaningful work in the community with people who are sentenced to short periods. In practice, therefore, they will be paper licences, not meaningful licences. I suggest that we are setting expectations that simply cannot be fulfilled and that the bill is, in fact, exacerbating the issue of dishonesty.

There is a real public confidence issue. The proponents of the bill claim that public confidence is paramount. However, specific, crucial arrangements in the bill—which I would like to talk about, if you would like to ask me about them—will have serious detrimental effects and will work in contradictory ways.

The Convener: In essence, you are saying that restricting certain offenders from going to prison would create the capacity to deal with the more serious offenders. You also seem to be saying that there is no capacity to deal with the community sentences aspect of the bill and the control and management of offenders who receive such sentences. Do other panel members agree or disagree with any of that?

Richard Sparks (University of Edinburgh): I am slightly more optimistic than Cyrus Tata about the overall shape of the bill, although I share some of the anxieties about its feasibility. Returning to the question that you originally posed, about public confidence and transparency, it seems to me that many of the problems that arise in explaining what is going on to an observant and indignant public come from the fact that the system set up an expectation that has not been realised and that supervision has become merely nominal. Problems also arise from situations in which something has happened that cannot be defended, explained or accounted for adequately. Explaining when and how prisoners are to be released is, clearly, an advance, as that is less likely to produce hostages of the kind that make it difficult to explain practice to people; the bill gives greater scope for adequate explanation of the integrity of the sentence as a whole at the starting point. Nevertheless, failed or nominal supervision is a huge problem for the reputation of the criminal justice system, and setting up an unmanageable expectation that more and more supervision will instantly be provided may create another problem.

Bill Whyte (Criminal Justice Social Work Development Centre for Scotland): I am glad that Cyrus Tata set the tone. The risk is that the bill will finish up being neither fish nor fowl, as my granny would have said. It sits somewhere in between and does not resolve the problem.

When I was a manager, I did not meet anybody coming out of custody who did not need supervision and help. Custody is a very disruptive experience. We know that short-term offenders are among the most vulnerable, needy and dangerous offenders, but, as has been said, the risk of harm that they pose will be below the radar of any risk assessment. They are the people whom we describe as serving life sentences by instalment—they are constantly in and out of prison.

To me, what is important about the bill is the fact that it gives a message to the public, which, if it succeeds, will be very helpful: someone who goes to prison must serve a period in the community as part of their sentence. In other words, the two parts of the sentence are not separate. It is rather unfortunate that the bill suggests that, for the purposes of punishment, a judge can extend the custody part but not the community part of a sentence. That gives a message to the public that the community part is the soft part. However, there is value in the bill saying, for the first time, that the community part is the essential part for community safety.

There is little evidence that custody—certainly, short-term custody—protects the community. The Scottish Prison Service is on record as saying, “Don’t send us anybody for less than 12 months. We can’t work with them.” Even in the recent report on Peterhead prison, it is noted that there are serious offenders who are not subject to programmes.

There is some clarity in the bill, so I share some of Richard Sparks’s optimism for its potential. However, the Kincraig committee’s recommendations, which led to the existing provisions, were pragmatically honest and

scrapped supervision for short-term sentences because we could not deliver it. The situation has not changed; indeed, it is worse. Such supervision will not be delivered through existing social work capacity. As has been said, the risk is that the bill will bureaucratise a form of risk assessment—which is a problematic art at the moment—and will not connect short-term prisoners to real services. The knock-on consequence of that, which has been described, is that the serious offenders will not get the resources that they need.

The bill is well intentioned and has some potential to help to clarify for the public the important elements in a sentence. However, it does not address the question why people serving sentences of less than 12 months—or less than 18 months, I would say—are being taken into custody at a cost of £1,500 a week. We are told that supervision costs £1,800 a year. That is not a cost benefit value; that is cheap supervision. If we want to do things for people in the community, we must spend the money.

The Convener: What about the public confidence aspects of what you have just said?

Bill Whyte: As has been said by previous witnesses, research suggests that victims want offenders to stop their offending behaviour and change. The bill must convey the right message to the public. If we want to punish people, we lock them up. That is a perfectly valid policy objective and community aspiration. However, custody will not help those people to change—we have no evidence that it will do so. Only through our not putting those people into custody or through our returning them to the community can evidence of change be generated. I think that public confidence will increase if the public seriously believe that what we are doing gives people a fighting chance to change.

The public are not stupid. They know that supervision at the moment is too cheap and that we are not achieving what we want to achieve. They recognise that punishment in prison does something symbolically, but they see offenders coming out and then going round the system again. The bill has a chance to increase confidence if it does what the Executive says that it is trying to do, but I do not think that the bill tackles the fundamental problem.

Jeremy Purvis: You said that the criminal justice social work system could not cope if the bill were passed. Have you calculated what additional resources would be needed to make it cope?

Bill Whyte: Social work capacity has grown over a number of years, but the committee will know better than me that the concept of throughcare was virtually abandoned in the 1980s and 1990s. In many ways it is a new service, and its capacity remains limited, but the expectations of the multi-agency public protection arrangements and of the violent offender and sex offender register, which covers the serious offenders, are drawing more and more time. We expect workers to do standardised assessments that can make a contribution. Tasks such as that have to be processed.

Somebody asked about the definition of supervision. The heart of supervision is about change—as opposed to the management and administrative elements. It takes time to change people's attitudes and their understanding of criminality, its consequences and how they might change their lives. It cannot be done quickly or cheaply.

The skills exist, but we are far short on capacity. I do not know the exact figures, but I know that the budget is sitting at about £80 million. I would say that the system would need about half that again, but I am speculating.

Jeremy Purvis: I want to ask Professor Sparks about licensing conditions. Will offenders perceive the new sentencing system, with custody and community parts, as legitimate? Do you think that there could be a positive impact on offenders? Not just the public might understand that there are separate requirements; sentencing could be more transparent to offenders too.

Richard Sparks: That would be a great benefit if it was the result. Much has been said about the advantages of focusing attention on risk and need, but offenders will lose confidence in the system if they see that supervision is unreal or, at best, a turning-up process. For the community parts of the new sentences to work effectively, the co-operation and compliance of offenders will be fundamental. Given the number of offenders who are being managed, the system cannot simply be imposed on people who do not adhere. Just as people may choose whether to take their medicines, offenders may choose whether to comply with a process of supervision. They need to see both benefits to themselves and that the system is being administered fairly. That could be accomplished, but probably not on an industrial scale.

Jeremy Purvis: I want to mention the effectiveness of post-release supervision. There are two problems with throughcare: first, it frequently does not exist; secondly, when it does, there is no compulsion. For example, when someone is released automatically on licence, they are not compelled to attend interviews or programmes. Under the bill, the element of compulsion will be explicit. When throughcare begins in a prison setting, it is more effective because a prison officer is the liaison and compulsion is involved—that was made clear to

me when I visited Edinburgh prison. The bill will extend compulsion into the community setting.

15:15

Richard Sparks: I am not nervous about compulsion. The benefit of establishing, explaining and robustly asserting the dual nature of the sentence is that it allows us to affirm a certain degree of compulsion as a legitimate requirement on people. In principle, I have no problem with that. Nevertheless, even processes that are compulsory, such as going to school, can be more or less successful, depending on how they are administered and on the degree of advantage to the individual concerned and of consistency in their relationship with the practitioner. All the processes that condition whether people are more or less likely to apply will obtain even when there is a higher quotient of compulsion.

Colin Fox: I have two questions. The first is about breaches and recalls to custody. You seem to be suggesting that some of the bill's provisions will lead to more breaches of licences and therefore more recalls to custody, and that there is a danger that they may raise the public's expectations of the criminal justice system's ability to manage offenders effectively. Is that a fair summary of the message that you have given out so far?

Bill Whyte: That is our fear. The evidence suggests that short-term offenders in particular, and young offenders, offend at quite a high rate. As both Richard Sparks and Cyrus Tata said, if we move to a system that turns out to be a hoop-jumping, box-ticking exercise, there will be cynicism from those people, there will not be meaningful help and, inevitably, the current revolving-door syndrome will continue. It may even increase. That is a real risk. As you say, the possible consequence is that the public's confidence will be reduced.

Richard Sparks: We should not assume that the public has a limitless appetite for seeing people breached, irrespective of the gravity of the offence. That is an empirical question. There is a danger of disproportionality in both directions. It is just as possible to damage perception of the system by taking sledgehammers to nuts and crushing butterflies on wheels as by under-enforcement.

Bill Whyte: That is correct. Practitioners say that if they have discretion in dealing with breaches, they can use the leverage to reconnect. If people are reconnecting not with anything meaningful but only with more hoops, that leverage will become counterproductive. The issue is not breach per se, but whether it is used in the context of a meaningful relationship and whether there is really access to the kind of assistance that will give people a fighting chance to turn their lives around.

Colin Fox: I turn to the consequences for our prisons. When I read Mr Tata's submission, a number of points jumped out at me. It states:

> "The overall consequences on the prison population of this Bill … should be expected to be very large."

Reference is made to overcrowding in our prisons. What effect will keeping more people in prison for longer have on the Scottish Prison Service's ability to work on rehabilitation of the people in its custody?

Cyrus Tata: I will restrict myself to the first part of your question; my colleagues can respond to the second part. The Executive's financial memorandum notes some of the bill's effects on the prison population but seems to ignore some of the other unintended consequences. There will be some perverse incentives. To my mind, section 6 is one of the most problematic provisions in the bill. The policy memorandum states that it will normally be possible for an offender to be released after they have served 50 per cent of their sentence, but the sentencer will be able to increase that to 75 per cent if they wish. Despite asking officials and others associated with the bill about that provision, I have been unable to find a clear explanation of why a sentencer would use it, given that they can simply increase the nominal sentence if they want to keep someone in custody for longer. Section 6 is a major point of contention.

The bill would also result in inflationary pressures on sentences. We have already heard from officials that serious supervision of people with sentences of six months or less—in practice, probably 18 months or less—is not possible. Members will be aware that the Parliament is considering legislation to raise the limit on summary sentences from six months to 12 months. In practice, if a sentencer thinks that a person deserves to spend four months in custody but would like them to have some supervision afterwards, so that they can be reintegrated, they will increase the custodial sentence to ensure that the person gets supervision. That is one of the unintended consequences of the bill that does not seem to have been considered in the financial memorandum. The bill must be considered alongside other changes that the Parliament is considering at the moment.

I will mention briefly the issue of the 15-day cut-off point—I know that the committee is aware of the perverse results it can produce. Someone who is serving a sentence of 21 days will serve less than someone who is sentenced to 14 days in prison. That must result in a breach of public confidence. People will ask how it can happen.

Colin Fox: That point struck us previously. Do you think that in practice sentences of 15 days or less will disappear?

Cyrus Tata: No.

Colin Fox: Do you not think that people will ask for more?

Cyrus Tata: That is one possibility. Other research that has been done suggests that there will be a knock-on effect in terms of delay and judge shopping. Judge shopping is the practice of defence solicitors seeking more favourable sentencers. We all know that inconsistency exists. It is perfectly legitimate—it is probably a professional obligation—for a defence solicitor to try to bring their case before a more favourable sentencer. That involves postponement and delay.

The 15-day cut-off point also raises an issue of comparative justice. A sentencer will realise that, if they give someone 21 days, that person will serve less than someone to whom they have given 14 days, and that they therefore need to increase the sentence. Such inflationary pressures do not seem to have been considered at all in the financial memorandum.

Colin Fox: Would your colleagues like to add anything?

Richard Sparks: A lot has been said about short prison sentences and I do not want to take up too much of the committee's time by returning to the topic unduly, but I have brought with me some data that members may find interesting. For the benefit of the committee's researchers, I note that the data come from the *Penological Information Bulletin* of the Council of Europe, which is a gold mine of comparative material.

All comparative international prison figures are a few years out of date, so they should be taken only as indicative. In the year to which the data relate, an average of 1.9 months of imprisonment were served by prisoners in Scotland, which is much less than the period served by prisoners in a number of European countries in which the prison population is much smaller pro rata. That suggests that in Scotland there is a great preponderance of short sentences, which is anomalous not only in the UK but on a European level. In Finland, for example, the average length of imprisonment is nearly six months, but the prison population there is significantly lower and more stable than that in Scotland.

If the committee is interested primarily in the effects of the bill on the prison population, it will find that the lengthening of sentences that are already long will not have as drastic an impact as the high volume of shorter sentences. If the high volume of shorter sentences is compounded by a ratcheting-up of breach processes, it is more likely to be the motor of growth.

Such sentences are of a nature that makes the prison population less manageable because of all the business that is involved in taking people from the courts, receiving them into prison, allocating them to places and so on. That is a big problem on a throughput, system-management level. At some point, the issue will have to be addressed in some way.

Colin Fox: You mentioned an average sentence of 1.9 months, but I was driving at the effect that sending more people to jail for longer would have on the entire prison population as regards rehabilitation programmes and so on.

Bill Whyte: The turnover is what counts. A much higher proportion of the daily population are long-term prisoners, but the annual turnover of prisoners is the same. It is the churn that clogs up the system. I do not know what the outcome will be; colleagues have said that the system is highly adaptive.

Judges are not represented at today's meeting, although the committee might interview them. A gamble is being taken. Judges might indeed say, "What is the point of short sentences?" and stop using them, although I know far too many judges who still believe that sending someone to prison for a few days teaches them a lesson. Despite all the research on what prison teaches people, judges still think that that is the thing to do.

Judges will recalibrate sentences. That is what they did after the passing of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Despite the provision on automatic release halfway through a sentence, the time spent in prison went up. Sentences were recalibrated and judges may do that again—they may do so in such a way as to ensure that prisoners spend exactly the same length of time in prison. As Cyrus Tata suggested, there is the risk that the very short sentences will create complications and that we will get more churn. In the long term, I do not know whether serious offenders will get longer sentences, but I agree with Richard Sparks that that will not make much difference one way or t'other.

Cyrus Tata: We should bear in mind that when the Sentencing Commission made its proposals—which were slightly different from those in the bill—its intention was to increase transparency and clarity. It had no intention of drastically expanding the prison population, but that is exactly what the bill would do. The commission strongly recommended that there should be recalibration; indeed, it recommended that the Parliament should lay down in statute that there should be recalibration, but that requirement has been

dropped. There should be recalibration downwards, because the main pressures on sentences will be upwards. As well as the pressures that are mentioned in the financial memorandum, there are a number of unintended ones.

Colin Fox: I look forward to the day when judges appear before us as witnesses. That might happen one day, but in the meantime we must satisfy ourselves and hope that judge hopping becomes an Olympic sport.

Jackie Baillie: I thought "judge shopping" was the phrase that was used.

Cyrus Tata: Judge hopping sounds quite interesting.

Jackie Baillie: Shopping is more my kind of sport.

Cyrus Tata: It was "judge shopping".

Jackie Baillie: My questions have largely been asked and answered, but I want to be absolutely clear about what you are saying. You appear to be suggesting that it is not simply a case of increasing capacity for risk assessment and the supervision or management of offenders because little will be achieved with prisoners on short-term sentences, that regardless of whether there is an increase in capacity we just do not have these guys for long enough, which means that we need to focus on prisoners on longer sentences.

You all said that 15 days is not an appropriate threshold. A range of appropriate periods have been mentioned. What would be an appropriate threshold—six months, a year or 18 months? I want to tie you down on that point.

Bill Whyte: I would go along with the model that is used in Finland, where there is a cap at two years. As far as I know, there is no evidence that Finland is overrun with offenders. Finland was extremely imaginative in continuing to allow the judiciary to put custodial weight on what the sentence was worth. Prisoners on sentences of less than two years are supervised in the community, with safeguards. An appropriate period would be 12 months or 15 months. People who would otherwise serve custodial sentences could be subject to longer community disposals, which would mean that they could be taken out of the system altogether. There is no rationale for a period of six months or nine months. A substantial period is necessary.

Jackie Baillie: Is that view common?

Cyrus Tata: I will keep my comments brief because I have spoken for long enough about other matters. I agree with Bill Whyte.

15:30

Richard Sparks: I tend to agree with what has been said, primarily because a redirection of resources seems to be necessary. If we want the bill to succeed and to have a robust, defensible and readily explicable structure, it seems to me that the new investment must go primarily into community parts of sentences. From a pragmatic point of view, the bill will work better if it does not result in additional expectations on or demand additional resources for the prison system, and I cannot see how that can be avoided without setting a relatively high threshold. Therefore, I think that I agree with Bill Whyte.

Jackie Baillie: If a judge issued a short sentence to be served under supervision in the community, would you argue that that supervision will not work unless it is long enough?

Bill Whyte: The issue of resources in the community still needs to be addressed. It seems to me that people have had a vision for many years when they have passed legislation. Section 12 of the Social Work (Scotland) Act 1968 put a duty on local authorities to promote social welfare and communities' safety. That is still the law, but I do not see leisure and recreation, housing, education and drug services having visions that they have a duty to promote the well-being of communities. A range of service providers has not even engaged in the dialogue. We are talking about criminal justice social work services and associated voluntary agencies, but we need to bring in a range of other players if we are serious about long-term desistance. There is a resource question either way. Why valuable money should be spent on a certain resource is a relative question.

Richard Sparks: A penalty such as community service need not be of great duration to have an impact on public perception or to benefit an offender. Not all penalties have to be very extended to satisfy penologically meaningful criteria.

Jackie Baillie: Okay. So there can be forms of supervision over a shorter timeframe in certain circumstances. I am trying to remove capacity issues from the discussion, which we agreed to do. I am interested in what works if the capacity issues are removed. You seem to be saying that there can be different interventions for people in short periods of time, so perhaps something can be done even when a short-term custodial sentence has been imposed or when a person is being supervised in the community. I see the witnesses agreeing.

The Convener: I want to ask Mr Whyte a question. You referred to Finland. Is there a cultural difference there? Are community

sentences perceived differently by the community there? Do such sentences result in social stigma?

Bill Whyte: There is a major cultural difference. What I described was driven by the executive and the judiciary, but I do not see our judiciary driving for such things at all. Furthermore, Finland does not have our media, which hound the judiciary and the Executive. However, I must assume that the cultural differences that you have raised exist and that people in our society accept that people should be subject to meaningful accountability in the system. We seem to have created cynicism. Somebody said, "If you don't get put in jail, you don't get dealt with." That is a strange mindset.

Maureen Macmillan: I am trying to dredge up what I know about Finland's prisons. The Justice 1 Committee looked at the Finnish system ages ago. I had the impression that if someone went to prison there, nothing was done for them—there were no anger management courses, for example.

What evidence exists about reoffending? Does it show differences between the reoffending rates of people who are supervised when they come out of prison and of people who are not supervised at all when they come out of prison? Has any research been done on the efficacy of supervision?

Bill Whyte: The Executive recently published data that are averaged over a two-year period. The advisers probably know more about the data than I do, but there are no huge differences in the reoffending rates. Reoffending rates among people who have come out of custody are slightly higher than the rates among those who have not. We are left with an argument. It can be said that probation or community supervision does not improve matters much and that it achieves much the same as prison, but such supervision is much cheaper than prison and I suspect that it is not as effective as it should be. Community supervision is so much less damaging in the short term. If we are getting no worse results at the moment, there is room for optimism in the data.

The data need to be refined. A figure of 60 per cent reoffending or whatever was publicised. The latest data suggest that the average reoffending rate, once quasi-convictions are taken into account, is 36 per cent. I think that that is a good figure. If two out of three offenders are turned around, that is pretty good. There is no cure. We need to build some confidence into the data, and we must have meaningful supervision and help. I would not wish to sell Finland as a model of service as such, although society did not fall apart when the Finns stopped sending people to prison for a certain amount of time.

Maureen Macmillan: You mentioned good supervision. What do prisoners need when they are released? What should we be giving them? What would you consider to be good supervision?

Richard Sparks: I think that Bill Whyte should answer all those questions. There is reasonably robust information. The key variables that determine whether people are more or less likely to reoffend persistently are not purely internal to the person. The person's overall situation includes such factors as whether they have access to employment or meaningful training; whether they have reconstructed or can reconstruct their relationship; and whether they will be able to come off their addictions. Those three factors should be considered in the foreground and focused on, although there will be numerous other things that might have a greater or lesser effect in particular cases.

Bill Whyte: We expect three elements to be important. First, there is a management dimension. People have to be held to account. If a relationship or working alliance is really purposeful, offenders value that and think that the person is there for them to give them a fighting chance to change. Most offenders want to change at some point. Some will not—there are professional criminals.

The supervisory part has two elements. One involves building people's individual capacity to understand what they have been part of, to begin to take control and to develop a sense of self-efficacy. A lot of offenders do not have control of their lives before they go into prison. Coming out of prison can be very difficult. The offence-focused work that we have come to know is very helpful, but it tends to deal with thinking, feeling and doing. We suspect that none of that work really comes to fruition unless there are social resources. Offenders need to be wrapped around with people, not police or social workers.

The word "support" has been used. Professionals should indeed be supportive, but I would not want a professional to provide me with support; I want friends, family and colleagues. Those groups are not easy to build. They are built through people's educational capacity, employment, leisure and associations.

Whether or not we use the jargon of social capital, we have to build something that gives people a stake in the community where they belong. That is not easy by any means, but we can do it for many people. That is where we move beyond a model of simply having a supervisor. Part of their role is to link individuals to a range of people. Some of the work has to be planned strategically by local authorities. I do not want social workers to do it all. There are educationists, leisure and recreation people, employment people, family members, volunteers and mentors, but we do not yet have the comprehensive packages. In

recent years, we have focused on the offence and management dimensions. We have not really taken seriously how to build social capacity in the community through employment.

We have a fair idea of the kind of things many people will need. There are some people who have been hugely victimised in their lives. I do not put that forward as an excuse, but it is a reality. Many of them will carry trauma throughout their lives, and some will need mental health services or trauma services, which I do not think are readily available.

Maureen Macmillan: It occurs to me that there is a gap between getting out of prison and getting support. I hope that things might be better under the Management of Offenders etc (Scotland) Act 2005. When I have visited prisons, I have met prisoners who got out of prison a year previously but went straight into the pub, got into a fight, assaulted somebody and came back in again. It probably happened within a day. Where was the supervision and support?

Prisoners need to live somewhere but do not know where they will live—which is a different kind of need—and drug dealers hang about outside prisons waiting for prisoners to come out. How are we going to catch that?

Bill Whyte: You have partly answered your question. The literature and practical experience show that whatever benefits prisoners acquire from programmes in prison wash out quickly when they go back to the same world and the same circumstances, because nothing in that world has changed. To some extent, we need to bridge people back into the community, which is the concept of throughcare. That is why I value the bill's recognition that a period in the community should be part of the sentence. It is really important that that be implemented, because that is what is likely to give us a chance to connect.

The model of throughcare is changing and the prison service is getting better at it. In the model that is opening up, rather than inviting people in to do a bit for a prisoner and then letting the prisoner out, the prison service holds the prisoner and, because the community is responsible for taking the prisoner back, the prison service asks people to come in and start the work long before they are due to return to the community. We must begin to address housing, leisure and recreation, literacy and employment before prisoners get out.

Maureen Macmillan: So there should be a seamless transition.

Bill Whyte: That is the ideal, but it raises all the practical issues such as numbers. How many people is it realistic to do that with?

Cyrus Tata: Can we do it with the vast bulk of prisoners, who are sentenced to three months or less? Prison is enormously corrosive. Some people say that offenders can be sent to prison for detoxification—sometimes sentencers believe that—but, unfortunately, as you may have seen reported in the papers at the weekend, the research does not bear that view out at all. In fact, it shows the reverse: people are more likely to use drugs in prison than they were before. Likewise, it is sometimes said that offenders can develop literacy skills while they are in prison. That is all very well, but we must not send people to prison to assist their education when that could be done in the community if we began to spend a bit more of the money that is devoted to prisons on community services.

The Convener: Could you turn to weapons, Maureen?

Maureen Macmillan: Yes. I am the person who asks the weapons question.

Jackie Baillie: I wonder why.

Maureen Macmillan: So do I.

Why are knife crime and other violent crime so commonplace among young men in Scotland? Will the bill help to reduce knife crime?

Bill Whyte: If somebody who has a knife in their pocket bumps out of a night club and starts to fight with somebody else, they are more likely to use it, so there must be some value in the bill's attempt to get knives out of circulation, but it will not solve the problem. We have an endemic culture of violence, but we have not addressed how we socialise our boys. We have put a lot of emphasis on women in recent years—and rightly so—but the question is, what is it to be a man or a boy? In a recent study in Glasgow, University of Bristol researchers interviewed young men and women. Conceptually, the interviewees were very new people but, when the researchers gave them illustrations of a man giving a woman a hard time, they wanted her man to stand up for her and go and give the other man a doing.

There are all kinds of ambivalences about violence in our society and we have not addressed that fact. We are beginning to consider circle time and restorative practice in schools. We are beginning to consider how we make good our relationships. Thirty years ago, the broken home would have been the predictor of crime but we are not overrun by crime—it might feel like we are, but we are not—even though family disruption is a norm for our young people. They do amazingly well, but they do not get the adult attention that they used to and we live in a much more complex world.

The bill deals with one element but, in a culture of macho violence, if somebody has a knife in their pocket they will use it. If we can get the knives out of circulation, that will help and, we hope, people will only punch one another—but we are not really addressing how we socialise boys. Moreover, with the freedom that young women have, they rightly realise that they are equally entitled to thump somebody, and they are emerging as just as violent.

Maureen Macmillan: Yes, they are emerging as knife carriers.

Colin Fox: That is a hopeful note.

The Convener: Yes: it reminds me of Frankie Vaughan and his work with boys clubs and boxing clubs in the past.

I thank the witnesses for their evidence. We will now move into private session.

15:44

Meeting continued in private until 16:13.

SUPPLEMENTARY SUBMISSION FROM CYRUS TATA, CO-DIRECTOR, CENTRE FOR SENTENCING RESEARCH, LAW DEPARTMENT, STRATHCLYDE UNIVERSITY

The Bill Ignores the Key to Achieving Clarity in Sentencing

The Bill deals with the management of sentences without tackling sentencing itself – once again changing exit points without looking at entry. The Bill has shied away from looking at sentencing policy. While it is accepted that the allocation of punishment in individual cases is a matter for the courts, *the overall objectives and shape of sentencing policy is a matter for Parliament*. The Bill will not achieve greater transparency because ultimately, in and large part, the 'disjuncture' between time announced and time served is a practical consequence of not tackling the question of who goes into prison and for what. By ignoring that question of who we should send to prison (i.e.: especially where persons are not a danger to the public) and for what, governments will continue to find that they have to manipulate release arrangements so as to relieve pressure on prisons caused by the throughput of huge numbers of very short term prisoners.

Issues Arising from the 15 Day Cut Off

ANY period in custody is extremely serious and has damaging effects leaves one in two homeless; breaks social and familial ties etc which are so vital to desistance.
There are also serious equal treatment considerations:
1. *The perverse effects of the 15-day rule*. This means that a person sentenced to custody for 21 days will serve less than a person sentenced to custody for an apparently less period (eg 14 days). This is plainly absurd and undermines the objective of clarity and intelligibility.
2. In addition to the perverse effects of the 15 day cut off, some sentencers may feel it is a matter of justice (comparative proportionality) that someone who would have been sentenced to 21 days imprisonment would serve less than someone who is sentenced to 14 days. It will be tempting (and in some respects understandable) for individual *sentencers to inflate their sentence to try to avoid this comparative injustice*. Other individual sentencers may feel that they cannot do this.
3. Given that the Scottish Executive acknowledges that between 15 days and 6 months the licence will be nominal , *why have the 15 day cut off point at all*?

Unintended Inflationary Pressures on Senctencing

Many (though not all) individual sentencers will feel that supervision after release from custody (i.e. combined sentence) is desirable in many cases. The policy memorandum tells us that only those serving 6 months or more will be expected to be in supervision (and it may well be that in time 6 months comes to be seen as too low to provide meaningful supervision). Consequently, **many individual sentencers will choose to add the extra time necessary in order that the person before them will definitely get the supervision and support**. With the new summary sentencing powers being increased to 12 months[1], this will be very tempting. It would have been more sensible to have kept the 12 month cut off recommended by the Sentencing Commission since this would coincide with maximum summary powers. Alternatively, the maximum summary powers should be kept at 6 months.

Nominal Licence Practice will Damage Public Confidence in Community Sentencing in General

The Policy Memorandum concedes that those sentenced to custody for six months or less (and we suggest probably more than 6 months in practice) will be subject to only a nominal licence. *This will set the reputation of community punishment up for failure*. Inevitably, it will not be long before one or more persons on a nominal licence commits a serious offence, which attracts considerable public attention. When it is discovered that in such cases s/he was 'on licence', the reputation not only of licence but (by association) community punishment more generally will be damaged. While this 'failure' would, of course, not be a failing of community punishment or criminal justice social work *per se*, it will be portrayed as such in the inevitable media furore, which will point the finger at criminal justice social work. *Public confidence in punishment in the community will, as a result, be undermined by its association with the nominal licence*. In other words, by making licensing so

[1] Criminal Proceedings (Scotland) Bill s33

wide, universal and nominal, it and all community sentencing is being set up for repeated public relations failures.

Setting of the 'Custody Part' in the Proposed Combined Structure (Section 6)

Section 6 of the Bill is one of the most unclear and contradictory parts of the Bill.

Section 6 provides that the custody part must be a minimum of 50% of the overall sentence, but that this may be increased to 75% if the individual sentencing judge considers it appropriate. *What is the rationale for allowing individual sentencers to increase the custody element to 75%?* None of the accompanying documentation provides an explanation.

S6 creates less clarity in sentencing – not more
Section 6(4) provides that an individual sentencer may increase the custody element to 75% in view of: the seriousness of the offence/s; previous convictions; the timing and nature of a guilty plea. *Yet all three of these criteria currently form (and will continue to form) the basis of determining the overall headline sentence. Why should individual sentencers now be asked to make the same assessment twice?* At best this seems to provide for unnecessary duplication and confusion.

S6 will create exacerbate disparities in sentencing
The policy memorandum supposes that 50% will be the normal 'punishment part' set by the court. This appears to amount to wishful thinking: there is nothing in the Bill which will ensure that this is likely to be the case. Indeed, individual sentencers are likely to deal with very similar cases in dissimilar ways (disparity).

S6 means that the aim of long-term public protection will be undermined
"Public protection is of paramount importance." [2]

This is why the new combined structure is proposed for all custodial sentences of 15 days or more: to be subject to licence in the community. Community supervision and licence conditions are intended to reduce the risk of re-offending both during the community part of the sentence and after the expiration of the sentence and thereby increase public protection. *Yet the proposal in section 6 to allow individual sentencers, in effect, to decrease to 25% the period of community supervision will undermine the very efforts to increase public protection, through a supported and supervised transition back into the community.* It is likely that practices will vary between individual sentencers dealing with substantively similar cases.

The Bill proposes that individual sentencers should be allowed to increase the custody part of a sentence to up to 75% because they wish, in effect, to punish the offender twice: once in terms of the overall sentence and again by limiting the time for structured community supervision and support. *Yet ironically, in many of those very cases where the offender and the community will most need community supervision the community element will have been reduced. Unlike indeterminate life sentenced prisoners*, determinate sentenced prisoners cannot be held or subject to licence beyond 100% of their sentence. Therefore, by allowing individual sentencers to reduce the community part to just 25% it will in fact make management and supervision of offenders both more difficult and shorter. Thus, enabling individual sentencers, to reduce the community element to 25% will undermine the very reason for ending automatic unconditional release: public protection, which is claimed to be of "paramount importance".

Square Peg in a Round Hole. The Bill has attempted to apply the logic of indeterminate sentence arrangements (e.g. for life sentence prisoners) to all 15 day-plus determinate sentence prisoners. The Bill appears to rely on the rationales used for indeterminate sentence prisoners and apply this to all determinate sentence prisoners sentenced to 15 days or more. The key difference is that determinate sentence prisoners must be released from all restrictions after the completion of 100% of their sentence.

[2] *Policy Memorandum*, p2 paragraph 7.

Artificial distinction between 'seriousness' and 'protection of the public' leads to more confusion not less.
S6(5) provides that in setting the custody part, the court "must ignore any period of confinement which is necessary for the protection of public". Background documentation indicates that this is supposed to require sentencers only to include the 'punishment part' of sentencing and thereby subtract the 'risk part' from the sentence. In practice I cannot see that this will work. In practice, the categories of 'risk' and 'seriousness' will continue to be very difficult to distinguish in determinate sentence cases. The Bill's attempt to draw this distinction will be seen to be artificial and un-transparent.

*I would recommend, therefore, that the Bill should **not** enable individual sentencers to vary the custody percentage for determinate sentenced cases. The purposes of retribution, deterrence, culpability and seriousness can be (and are) achieved more transparently through the setting of the appropriate overall headline sentence.*

***If* S6 is retained then there will need to be a requirement for sentence recalibration**

In its report[3], the judicially-led Sentencing Commission explicitly recommended that to take account of increases in real time served in prison, there should be recalibration of sentencing:

> "We therefore recommend that, in any new statutory regime, Parliament expressly provides that a sentencer, when having regard to sentences imposed under the previous regime, must also have regard to the right to early release under that previous regime. Accordingly, it will be appropriate for sentencers acting under the new regime…to recalibrate and reduce them by the extent necessary…"[paragraph 5.8, sic]

Currently, it is understood that the sentenced person would be released after 9 months of an 18 month sentence. (50%). However, section 6 will allow the individual sentencer to pass the same headline/official sentence (18 months) for the same case, but to increase the effective period in custody to 75% (in this example 12 months). Thus, the effective (or real) custodial sentence will be 3 months longer, although the official/headline sentence remains the same.

For reasons not explained by the background policy documentation, **the recommendation by the Sentencing Commission that "Parliament expressly provides" for recalibration has been completely omitted from the Bill.**

[3] The Sentencing Commission for Scotland (December 2005) *Early Release from Prison and Supervision of Prisoners on their Release*

SUBMISSION FROM SACRO

Supervision in the Community

We consider that it is vital that the value of supervision and support of offenders in the community be recognised as major contributor to community safety. At the same time it has to be appreciated that there are resource implications in providing supervision and support and that they should therefore be targeted on those offenders who require them.

These functions can be summarised as follows:

Supervision

- Ensure compliance with licence conditions
- Provide opportunities for the supervisee to address issues related to offending
- Monitor and take action in relation to identified risk of re-offending and risk of harm.
- Observe, note and report significant aspects of the resident's attitudes, behaviour, mental and physical health, response to support, family and social relationships.
- Take appropriate action if there are suspicions of illegal activities.
- Provide written progress reports on the above when required.
- Initiate breach of licence process when circumstances warrant it.

Support

- Community safety is enhanced through the provision of support, which is likely to increase the effectiveness of monitoring and supervision activities. It is designed to assist the resettlement of the offender to a stable lifestyle in the community, and in doing this, help to reduce the risk of offending. It is likely to include some or all of the following:
- Advice, guidance and assistance to obtain benefit entitlements, supported accommodation, access to training and employment opportunities access to health services
- Life skills work designed to help the with budgeting, healthy eating, basic health information and household skills.
- Encouragement and assistance to pursue legitimate and constructive leisure interests.
- Advice and guidance about relationships, e.g. with family, friends.
- Support to sustain efforts in regard to the above activities.

There is an abundance of evidence that offenders' prospects of avoiding future offending are greatly increased if they see themselves as having a stake in society through opportunities to succeed. Suitable accommodation, employment and moving away from substance abuse are three of the most crucial factors.

The voluntary sector plays a major part in the provision of a wide range of services that complement the supervision which is the responsibility of the statutory services.

Voluntary Throughcare

We take the view that much of the support that ex-prisoners need to adopt a law-abiding lifestyle can be provided on a voluntary basis if offenders are encouraged and motivated to receive it. Our evidence is based on Sacro's experience of providing a Community Links Centre. A paper describing this service is attached for reference, as is a short case study to illustrate an immediate post release service.

The great majority of prisoners do not require statutory supervision but many will benefit from this kind of support.

We recommend that the Scottish Executive invest more resources to make sure that the best of the current models of service delivery be rolled out across Scotland to make them readily accessible.

We further recommend that statutory supervision be reserved for those serving sentences of 12 months or more.

Fit of this Bill with the Management of Offenders (Scotland) Act

The major aim of the Act is to ensure that all the relevant agencies work jointly to reduce re-offending. The creation of the Community Justice Authorities and the duty on agencies to co-operate will underpin achieving this objective. We welcomed these initiatives.

We are concerned, however, that implementation of concomitant desirable processes such as Integrated Case Management and joint risk assessment would be undermined by placing unrealistic expectations on police, on social workers and on prison officers, not to mention the voluntary sector, the courts and the Parole Board. We refer, of course, to the huge numbers that would have to be unnecessarily risk-assessed and supervised and to the increased number of recalls and longer sentences.

The new demands, would in all likelihood, reduce the quality of the input of all the agencies to those cases and offenders that need it most. This, in turn, would threaten public safety and thus the confidence in the new joint working arrangements and also adversely affect the morale of all the staff concerned.

THE COMMUNITY LINKS CENTRE - Putting The Jigsaw Together[1]

Quote from a service user of the Community Links Centre:
One day at benefits I was told to go to Castle Terrace. When I got there, there was a note on the door telling us to go to High Riggs job centre, and when I got there, they told me I had to get my housing form stamped. This was still in my B&B, so I had to go back to collect it. I returned to High Riggs only to be told I would also need ID. I returned once more to the bed and breakfast and then back to High Riggs only to be told they were very sorry that they had made a mistake and I wouldn't get payment until the next day. If my Sacro worker hadn't been there to take me back and forwards I know I would have lost it and probably ended up back inside.

This is an example of how the Community Links Centre helps prevent people going back inside.

Introduction

One of the purposes of this conference is to consider how interagency working and partnerships can help to meet the learning and skills needs of offenders. What I aim to do in the next 15 minutes is to

- highlight some of the challenges, facing prisoners returning to the community from prison, that form barriers to employability
- and tell you about the Community Links Centre initiative in Edinburgh and its potential to overcome obstacles to employability through a co-ordinated , interagency approach to resettlement in the community.

There's widespread acceptance of the Scottish Executive's aims to reduce re-offending – to make communities safer. We know that 60% of discharged prisoners are reconvicted within two years and that 43% return to prison within the same time period. The work of the Community Links Centre has an important part to play in reducing those figures, by addressing the barriers to employability.

Barriers to Employability

We also know that *"research consistently identifies sustained employment as the biggest single determining factoring affecting ex-prisoner recidivism rates."* (Adams and Smart – see report details below)

However, there can be immense obstacles in the way of prisoners taking up opportunities that may be offered to improve their training and employment prospects. These have been well documented

[1] *Presentation at a conference "Role of Education and Skills in Enhancing Life Chances and Preventing Offending", Edinburgh, 23 February 2006*

in a report of a study carried out here in Edinburgh last year. It was commissioned by the Capital City Partnership and I commend it to you because its analysis and conclusions about employability and offenders will also be relevant to other parts of Scotland.

Employability Support in Edinburgh For People Leaving Prison[2]

The report points out the range of potential barriers that may have to be overcome:
- Lack of suitable accommodation
- Lack of education and employment
- Drug and alcohol abuse
- Mental and physical health issues
- Poverty, debt and homelessness
- Poor family networks
- Mistrust of mainstream agencies
- Poor life-skills as a result of institutionalisation
- The deterioration of personal circumstances as a direct result of imprisonment.

Other potential barriers pinpointed by the Adams and Smart study include:
- Short sentences making pre-release work difficult
- Kaleidoscopic patchwork of un-co-ordinated community-based services – which is best for the prisoner?
- Some prisoners simply not being appropriate for joining the labour market, either for economic reasons or because they know they are nowhere near ready!

Just how significant these barriers are becomes clear when we look at information about the 2000 people released from prison to Edinburgh in 2003.

- Around 1750 were drug users, almost 90%
- 800 had mental and physical health problems, 40%
- 570 were homeless. Between 25-30% (Capital City Partnership research, 2005).

Research from England and Wales (Social Exclusion Unit Report, 2002) tells us some interesting statistics about offenders and accommodation:

- 1 in 3 NOT in permanent accommodation prior to prison
- 1 in 3 lose housing on coming into prison
- 1 in 2 are homeless on release!

The research also points out how this lack of accommodation can affect resettlement:
- Suitable accommodation can reduce recidivism by 20%
- Ex-prisoners with an address are three times more likely to be in paid employment.

So, the picture is a complex one and, as usual, there is no one panacea or solution.
Sacro certainly does not have all the answers but we do think the Community Links Centre model, now in its early days of operation in Edinburgh, can go some way to addressing some of the issues. This is especially because the ”throughcare service agreements” between the Sacro service worker and the prisoner/ex-prisoner will take a holistic approach to tackling the kinds of problems that constitute the barriers to utilising employability services.

Sacro is not an employability specialist and has no ambitions to set up a stall in this market. However, employability and employment will undoubtedly be crucial factors for many of our service users. The Adams and Smart report suggests the potential for the Centre to act as a “partnership vehicle” should be explored further by all concerned. In other words, as employability is unlikely to be the only issue for the service user, our role is to support the employability specialists by assisting the service users to put the other elements of the jigsaw in place and to sustain their motivation.

[2] Eddy Adams and David Smart (November 2005) Google the Capital City Partnership website, publications section

Let me now tell you about the Community Links Centre.

In summary:

- A Sacro worker gets to know the prisoner through at least three visits while still inside and together they plan and prepare for release.
- The same worker then supports the prisoner on the outside to get the services he or she needs from other agencies or perhaps by providing some modular interventions themselves; and by motivating them to stick to the plans they've made.

Sources of referrals-slide . CLC works closely with the Enhanced Casework Addiction Service (ECAS) provided in the prisons by Phoenix House-- Throughcare Addiction Service referrals.

The Centre is the City of Edinburgh Council's way of implementing the Scottish Executive's Throughcare initiative for voluntary assistance for prisoners sentenced to less than four years. These referrals come from SPS, Community agencies, prisoners/ex-prisoners and their families. The priority target groups are offenders with addictions issues and offenders who pose high risk of harm to the community.

In Sacro, work with the Throughcare Addiction Service priority group is an integral part of the Community Links Centre service and the same model is used, whatever the issue for, as with employment, drugs are rarely the only issue for a service user.

The CLC provides proactive encouragement and access to a range of supports for prisoners discharged to Edinburgh, the majority coming from Polmont, Cornton Vale and Saughton. It is intended to mirror the interagency work carried out in the LINKS Centres in the prisons, and provide the continuity of service that will increase the likelihood of successfully keeping the service user engaged in the activities and relationships that will break the cycle of offending.

The Sacro staff work from a city centre base, which will have some space to enable other agencies to provide their services for Centre users.

Outreach work will complement the in-reach work in prisons and the work carried out within the Centre, so Sacro staff will also meet service users in their local communities. It is envisaged that community agencies working in partnership with Sacro will let us use their premises for this work. Home visits will be made when appropriate.

Since the service was introduced late last year, the Centre staff have been in dialogue with a number of key statutory and voluntary agencies in Edinburgh to discuss the best ways to collaborate to meet the service users identified needs, share information and get feedback on outcomes and for tracking (important for evaluation). Protocols between the agencies are being drawn up as necessary.

The services offered to Centre users 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 (particularly difficult in Edinburgh at present as offices are being closed and replaced by call centre lines), access to education, training and employment as well as access to health services/GP.
- Assisting access to drug treatment services (support can be accessed quickly but the wait for a prescribing services can be as long as six months) and helping to sustain ongoing treatment
- 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.
- Support and encouragement to service users to attend programmes that are intended to reduce their risk of re-offending

- 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.

Service users are assessed for where they are on a line between "in crisis" and "thriving". At one end people will need to have their basic needs worked on before they can take up any opportunities provided by the employability services. Others further along the road may be able to take up opportunities **if** they are given a measure of support on their basic needs alongside the employability preparation, training, learning or employment.

CONCLUSION

Key factors for success include:

The professional relationship developed by the worker meeting and planning with the service user in the prison and the same worker building on that relationship to motivate the offender once he is in the community.

Also crucial to the success of the service are the partnership agencies and excellent interagency working with- The Council, SPS, Phoenix House, and a wide range of community-based agencies in Edinburgh.

A third factor crucial to the success of the service and outwith Sacro's control, is the capacity of these community-based agencies. Already we are experiencing a shortage of available accommodation and difficulties in accessing drug rehabilitation places.

The systems and supports are in place but joint strategic decisions and the political will to ensure all the pieces of the jigsaw are in place, will be essential for CLC to add its potentially significant contribution to reducing re-offending. We hope this will be achieved through the inter-agency Advisory Group, which has been established for CLC.

CASE NOTES

Date: 21-10-05 **Name:** G

G was picked up from the prison at 9.15 am, and we confirmed the "plan of action" for the morning. G informed me that he was nervous about being "free" and stated that he was grateful that Sacro staff were willing to collect him from jail, as he felt that he would not make it past the first off licence.

As agreed, we went to the Benefits office at Wester Hailles, where G completed the necessary forms to begin his claim for benefits. There was confusion about his status as being medically unfit to work, but I informed the benefits officer that we intended to arrange a doctor's appointment for the following Monday, to confirm his medical status. G felt that it was good that this had been completed, as it was one less worry that he now had to deal with.

Then we went to the Post office to cash his Community Care Grant Cheque. However, as G did not have any ID the cashier refused to cash his cheque. Upon querying how he could verify his ID we were informed that the Benefits office had the capability to do this. We returned to the Benefits office and after discussions with the officer there we managed to get a letter from the benefits office confirming G's identity. Again G was grateful that I was there as he stated that he would have "lost the plot", and "walked out, without getting anything sorted".

Upon returning to the post office G was able to cash his Cheque. I made a passing comment to G about giving the money to his girlfriend to look after, but he stated that he was the one who would look after the money, and he felt that he would not spend it on drugs or alcohol. However, on passing an off licence on the way out from the post office G said "Thank god you are here, or else I would be straight in there".

We then went to the doctor's surgery, where G arranged an appointment for the following Tuesday. Although the surgery was on the way to his girlfriend's, again he stated that he would not have got round to making the appointment if I had not been there to insist he did it. G realised that it was another issue that he would not have to deal or worry with in the future and again was grateful.

G then directed me to his girlfriend's house, and he introduced me to her. Whilst G was putting away his belongings and having a quick wash, his girlfriend informed me that she was extremely pleased that I had taken the time to accompany G to and helped him with the various agencies. She acknowledged that she had not expected to see G straight away, as she thought he would end up buying drugs or alcohol as soon as he was released from prison. She stated "At least you are giving him a better chance than he has had before, by helping him like this".

After having a cup of coffee and informing G's girlfriend of the times of the appointments that had been arranged, we left to go to the CDPS office on Spittal Street. G then informed me that he had to go back to the house as he had forgotten to take money, as he had given it to his girlfriend. G stated that he had thought about my advice and realised that it was a good idea, otherwise he would have spent it all on alcohol or drugs in a short period of time. On the way to the CDPS office G could not emphasis enough how grateful he was for me taking the time to help him. He stated that this was the longest period of time, after being released from any sentence, that he had remained drug and alcohol free. He said that if I had not been there he would not have made it to his girlfriend's house nor attended all the appointments that had to be attended that day.

I took G into the CDPS office and when taken in for his appointment, I then returned to the office. We have arranged for another appointment for Wednesday 26th October, as this will allow G time to attend the doctor's on Tuesday before coming to see me.

G was informed that if he had any worries or concerns before the appointment he should call the office. G agreed to this and once again thanked me for all the help that he had received so far

32nd Meeting 2006 (Session 2) 21 November 2006

SUBMISSION FROM SCOTTISH RETAIL CONSORTIUM

SRC Response to Sections 43 to 46 of the Bill containing provisions relating to restrictions on the sale of non-domestic knives and swords

The Scottish Retail Consortium (SRC) was launched in April 1999 as a retail trade association for the full range of retailers in Scotland, from the major high street retailers and supermarkets to trade associations representing smaller retailers.

The Scottish retail sector employs 261,000 people, 1 in 10 of the national workforce, in 26,500 outlets. In 2004 Scottish retail turnover was £21 billion, accounting for 12% of total Scottish turnover.

The retail sector is key to the revitalisation and renewal of urban and rural communities across Scotland. The SRC's members provide a vital community service, a focus for physical regeneration, and sustained investment in people and places.

The SRC's parent association is the British Retail Consortium (BRC) with offices in London and Brussels.

Overview

The SRC appreciates the opportunity to comment on Sections 43 to 46 of the Custodial Sentences and Weapons (Scotland) Bill relating to restrictions on the sale of non-domestic knives and swords.

The SRC supports the objectives of Sections 43 to 46 of the Bill to put in place safeguards which will help prevent potentially dangerous weapons falling into the wrong hands. The SRC are also fully supportive of the role that the Bill will play in the Executive's reform of knife crime law, and the wider package of measures to tackle knife crime and violence more generally.

Furthermore the SRC is in agreement with the Scottish Executive that additional measures need to be taken to tackle knife crime. Retail staff can be victims of knife crime, and the SRC welcomes any steps that will reduce the chances of retail staff and others from falling victim to knife related crime.

Licensing Sellers of Swords and Non-domestic Knives

The SRC took part in the Scottish Executive consultation '*Tackling Knife Crime - a Consultation',* published in June 2005, and we are pleased to note that the vast majority of concerns we raised in response to the consultation have been dealt with. However we still believe that a number of key areas require careful consideration during the scrutiny of the Bill:

Definition of a non-domestic knife:
The SRC believe that there is still some ambiguity surrounding the definition of 'non-domestic knife'. This term needs to be absolutely and clearly defined, and the definition should exclude as many types of knives that are generally used in domestic situations as possible.

Many of our members sell a range of knives, including stanley knives, camping knives, swiss army knives and pen knives, and it would be unfair to target retailers who sell these legitimate and commonly used knives, with a licensing scheme. The SRC would suggest that the definition proposed by the Scottish Executive in the consultation paper could encompass more products than is intended, and would refer back to the SRC's original suggested definition of a non-domestic knife:

> *'a knife that is primarily designed to slash or stab and could not reasonably be described as having a legitimate domestic or business purpose'.*

Cost:
It is impossible to estimate the cost of a new licensing system without knowing exactly what type of knives would be covered by the system (hence the importance of a clear definition), and without knowing what the conditions of a licence would be. However, the following represents the potential direct costs of introducing a licensing scheme:

- Installing/upgrading CCTV systems.
- Development and implementation of new systems to record all transactions in relation to the sale of a non-domestic knife.
- Obtaining photographic evidence of the purchaser's identification.
- Regulating the display of knives on the licensed premises e.g. blacked out windows, locked cases etc.

Furthermore, factors such as staff training and staff stress caused by enforcing new regulations in potentially inflammatory circumstances must be taken into account. It is also important to note that the cost of a licensing scheme will be disproportionately higher, and will have a greater impact, on smaller retailers.

Consistency of approach:
The SRC are clear about the need for the Scottish Ministers to set, by statutory instrument, minimum conditions for any knife dealer's licence. However we have concerns regarding local authority powers to impose additional licence conditions.

As we understand it, different conditions could apply to the sale of different products in different areas of Scotland. The SRC are concerned that this may cause confusion, and could potentially be difficult to administer, particularly where a retailer trades in more than one local authority area.

Conclusion

Retailers take their role in the sale of age-restricted products very seriously, and we feel that is important to note that SRC members do not sell the type of knives that are used in violent crime (for example sword sticks, push daggers, death stars, or butterfly knives). SRC members sell products that are used on a daily basis within a domestic and DIY environment.

We are fully supportive of the package of measures being developed to tackle the problems associated with knife crime, and with violent crime more generally. However we would urge the Scottish Executive to:

1. Develop a licensing scheme that:

    i. Minimises any negative impact on legitimate sellers and purchasers of non-domestic knives.
    ii. Is fully transparent.
    iii. Is uniform across all local authority areas.
    iv. Is based on a clear definition of a non-domestic knife.
    v. Is as easy and cost effective for businesses to administer as is practicable within the boundaries of the law.

2. To continue to support a full range of non-legislative initiatives to tackle the problem of knife crime, including continued support for the Violence Reduction Unit and Action on Violence in Scotland, and the consideration of additional knife amnesties.

SUBMISSION FROM PAROLE BOARD FOR SCOTLAND

The members of the Parole Board for Scotland were pleased to be afforded the opportunity to comment on the proposals contained in the above Bill in so far as they relate to the release of offenders on licence and the recall of licensees whose behaviour in the community indicates that they present as a risk of causing harm.

The members of the Board had the following observations to offer.

Section 6, Setting of custody part
The members noted that it is proposed that all offenders who are sentenced to a term of 15 days or more will be made the subject of a custody and community sentence where a minimum of 50% of the term of the sentence must be spent in custody. Given that all prisoners serving such a sentence are to be assessed on a regular basis in order to assess the risk of serious harm that the offender may pose to the public it is difficult to envisage how this will be achieved with offenders who have been sentenced to a combined sentence of less than 12 months. In such cases the actual time spent in custody will be of such short duration that little if any effective work to address offending behaviour could be arranged and undertaken during the custody period. Such offenders are generally described as a "public nuisance" as opposed to a "risk of serious harm" and the Board consider that resources should be focussed on those offenders who present a risk of serious harm to the public.

The members further noted from the proposed provisions contained in section 27 of the Bill that those sentenced to a custody and community sentence of less than 6 months are not to be the subject of supervision in the community. The members consider that this proposal reinforces the position that such individuals should not be the subject of custody and community sentences.

Another difficulty that is likely to arise in connection with the inclusion of such offenders within the provisions of the Bill is the matter of the provision to the Parole Board of information about the offence or offences that resulted in the individual being sentenced to a term of imprisonment. At present the Parole Board relies to a great extent on the detailed information contained in the report that is prepared by the judge who presided at the offender's trial. It is not clear whether sentencing Sheriffs are to be asked to provide post sentencing reports in a manner similar to those currently prepared by High Court Judges. If sentencing Sheriffs are to be required to prepare a post sentence report in respect of all offenders who receive a sentence of 15 days or more, this will represent a considerable burden. Given the short time frame available the Parole Board is likely to encounter great difficulty in processing such cases. These problems will be particularly acute in circumstances where the Scottish Ministers revoke such an offender's licence and the likelihood will be that the sentence will have expired before the Parole Board can consider the case.

Section 2, Parole Board rules
The members of the Board look forward to contributing to and commenting upon the draft rules.

The members noted that the Board is to be given the powers to cite witnesses to appear before a hearing of the Board in order to give evidence to it or to produce documents. The members commented that the Parole Board Rules as presently framed provide for the Board to cite witnesses only when it is sitting as a Tribunal dealing with the case of a life prisoner or a recalled extended sentence prisoner. This has proved to be problematic when the Board convenes an oral hearing to consider the case for re-release of a recalled determinate sentence prisoner as, in such cases, the Board does not have the powers to cite witnesses. The members of the Board welcome the proposed extension of the Board's powers to cite witnesses.

Section 10, Review by Parole Board
The members noted that the Bill as currently drafted provides that:

Before the expiry of the custody part of the prisoner's sentence, the Parole Board must determine whether section 8(2) applies in respect of a prisoner.

In order to assess the risk of serious harm that the offender may pose to the public the Parole Board requires access to a dossier of reports that contains information about:

- the prisoner's previous offending record;
- the offence that resulted in the sentence currently being served;
- offence related work undertaken while in custody;
- the prisoner's behaviour in custody;
- psychological or psychiatric intervention while in custody;
- the prisoner's proposed home background on release; and
- the community based supports and specialised counselling services that will be made available to the prisoner on release.

The foregoing reports are gathered together by officials of the Scottish Prison Service from a variety of sources. Experience over the years has taught the Board that a number of reports may be submitted late or the Board may require to seek at its own hand additional information. In these circumstances, it will not always be possible for the Board to conclude its consideration of each case and arrive at a determination before the expiry of the custody part of the prisoner's sentence.

The Board therefore suggests that paragraph 10(2) of the Bill requires to be amended to reflect the foregoing.

Section 11, Release on community licence following review by the Parole Board
Sub-paragraph (4) of this section requires that in the case of a determination under section 10(2) "the direction must be implemented on the expiry of the custody part of the prisoner's sentence". For the reasons explained above that will not always be possible.

In addition, over the years it has been the Parole Board's experience that for a variety of reasons it is advisable to provide for a prisoner's release with what is described as a "forward date" as opposed to release on the prisoner's parole qualifying date or, as is now proposed, immediately upon expiry of the custody part of the sentence. Usually release on a forward date arises where the Board wishes to see a prisoner further benefit by way of a gradual re-introduction into the community by way of additional home leaves from the Scottish Prison Service's open estate or where suitable accommodation arrangements are not in place because the agencies that provide accommodation cannot earmark accommodation for an individual until such time as release from custody has been agreed and a specific release date established.

The members of the Board therefore consider that sub paragraph 11(4) of the Bill requires to be amended in order to accommodate the situations described above.

Section 12, Determination that section 8(2) applicable
The members formed the view that sub paragraph 12(4) (a) and (b) could be re-drafted in the interests of transparency.

Section 17, Life Prisoners – Review by Parole Board
The members noted that sub paragraph (2) provides that **before** the expiry of a life prisoner's punishment part, "the Parole Board must determine whether subsection (3) applies in respect of the prisoner.

For reasons similar to those set out at paragraph number 3 of this submission it will not always be possible for the Board to conclude its consideration of a life prisoner's case before expiry of the punishment part of the life sentence.

In the circumstances, the members of the Board are of the view that paragraph 17(2) of the Bill requires to be redrafted to reflect the fact that the Board may not always be in a position to reach a determination before expiry of the punishment part.

Section 18, Release on life licence following review by Parole Board
The members noted that the provisions contained in this section require that where the Board is satisfied that a life prisoner is not likely to cause serious harm to members of the public it must direct the Scottish Ministers to release the prisoner on life licence. It also provides that the Scottish

Ministers must release the prisoner on life licence and, where the punishment part has not yet expired, the prisoner must be released on the expiry of the punishment part.

The members of the Board are of the view that these provisions are somewhat restrictive. The members of the Board are of the view that provision should be made for the Board to direct a life prisoner's release with a forward date. Such a provision would enable the Board to direct the release of a prisoner subject to all the necessary community supports, including suitable accommodation, being put in place.

Section 34, Effect of revocation
The members consider that this section would benefit from re-drafting in order that it is clear from the outset that confinement of a custody and community prisoner until the expiry of his or her sentence and the confinement of a life prisoner in custody until he or she dies is wholly dependant upon the Parole Board not directing their re-release on licence.

Schedule 1, Section 2, Membership of the Parole Board
The members of the Board particularly welcomed the proposal to include amongst its membership a person who has knowledge and experience of the way in which, and the degree to which offences perpetrated against members of the public affect those persons. The members commented that this was a welcome development that would enhance the expertise of the Board.

Financial Memorandum, The Custody Part, Risk Assessment and Decisions to Release
The members noted with concern that paragraph 151 of the Financial Memorandum contains a proposal that the Parole Board Rules will be amended in order to ensure that decisions reached by Tribunals of the Board are unanimous. In order to achieve this it is proposed that Tribunals of the Board will comprise of only two Board members, as opposed to three at present. The members of the Board are of the view that one of the strengths of the Board and of Tribunals is the considerable breadth of experience of the members. The members consider that restricting the membership of Tribunals to only two members will ensure that the Board is not in a position to draw on the wide experience of its members. At present the chairman of a Tribunal must be a person who holds or has held judicial office or a solicitor or advocate of not less than 10 years standing. The members understand that it is not proposed to alter the status of the chairman, or convener, of the Tribunal, therefore if a Tribunal is to consist of only two Board members and it is clear that one must be a legally qualified member, the Board will not be in a position fully to utilise the expertise of individual members.

A further concern that the members have in relation to the proposal that all Tribunal decisions require to be unanimous is that such a requirement is incompatible with the right of the individual to a fair trial, as protected by Article 6 of the ECHR. The two members of the Tribunal would know from the outset that they were required to reach a unanimous decision. The need to reach unanimity will have the obvious effect of pressurising the decision makers to come to a common view rather than assessing the matter dispassionately and independently having aired their individual views in discussion. Ultimately there may be no common ground and the Bill makes no provision for such circumstances. It may be that a two member Tribunal agrees not to direct the release of a life prisoner but there is disagreement about the timing of the next review, again the Bill is silent with regard to how such a matter is to be resolved.

The members also noted that paragraph 173 of the Financial Memorandum advises that savings of £50,000 will accrue as a result of the Parole Board not being required to consider cases involving the recall to custody of licensees. That is not correct. The calculation does not reflect the fact that the Board considers such recall cases during the course of each of its 48 casework meetings that are held each year. Such casework meetings will continue to require to be convened in order to consider the cases of offenders who have a statutory right to have their case for release on licence considered under the provisions of the Prisoners and Criminal Proceedings (Scotland) Act 1993, as amended, and to consider the case for re-release of licensees who have been recalled to custody by Scottish Ministers. As yet no indication has been given as to when all those offenders who have rights under the 1993 Act will have completed that part of their sentence (two thirds) that they must serve in custody before they are released, but indications are that it will be some years.

Certainly there will not be fewer cases to be considered at each casework meeting as any reduction resulting from recall cases being considered only by the Scottish Ministers will be more than offset by the costs incurred in dealing with the anticipated increase in the number of recalled offenders who will have their cases referred to the Board for consideration of re-release. However, the Board will continue to look at how it conducts its business with a view to making efficiency savings when any new arrangements are introduced.

I along with other representatives of the Board look forward to giving evidence to the members of the Justice 2 Committee on Tuesday 21 November 2006.

SUBMISSION FROM RISK MANAGEMENT AUTHORITY

The Justice 2 Committee has called for views on the stated purposes of the Bill and on the extent to which improvements can be expected and policy objectives met as a result of the Bill's proposed measures. Views are required on the general thrust of the policy proposals and also for specific areas of concern to be highlighted.

The Bill has two main policy objectives. The first is to end the automatic and unconditional early release of offenders. The second is new controls of the sale of non-domestic knives and swords.

This response from the Risk Management Authority (RMA) is primarily concerned with the provisions for custodial sentences.

The Merits of Risk Assessment and the Use of Combined Sentences

The RMA agrees that ending automatic and unconditional early release and replacing this with combined sentences should assist in meeting the policy objective to provide a clearer, more understandable system for managing offenders. This should also assist in improving public knowledge, transparency and public understanding of the criminal justice system.

The RMA welcomes the commitment to take account of public safety by targeting risk, not just the risk of re-offending but also the risk of serious harm.

The RMA also welcomes the policy position that addressing re-offending is assisted by the monitoring and supervision of offenders in the community. It is important to integrate offenders back into the community and to continue the rehabilitative process after a period in custody, on a supervised basis. It will be important to ensure that adequate resources are in place to provide the levels of supervision and support required to carry out this work effectively if public confidence is to be enhanced.

However, it is important that public expectations are appropriately managed. Risk assessment is not and never will be an exact science. When dealing with prediction in any field, the complex interaction of individual behaviour and environmental factors means that a degree of uncertainty is always present which has to be managed.

The Assessment Process

The RMA welcomes the proposals to undertake assessments of the risk of serious harm for offenders prior to their supervised release into the community. The RMA has very recently commissioned work to produce a Risk of Harm Practice Manual for practitioners in Scotland. However, the RMA is concerned about the Bill's proposals for risk assessments for the offenders serving very short sentences. The proposals to conduct risk assessment for every offender serving a sentence of 15 days or more are not in line with best practice in risk assessment, as it will be neither practicable nor necessarily appropriate to conduct formal risk assessment for offenders serving short sentences of under a year. It is the RMA's view that the Bill's proposals as they stand could give the false expectation to the public that all offenders serving a period of 15 days or more will be subject to a risk assessment of both re-offending and of serious harm. This is not possible and it is RMA's view that the Bill needs to differentiate between formal risk assessment and the assessment of needs. For many prisoners serving sentences of under a year, all that can be

reasonably assessed will be acute needs, frequently of a physical nature, such as addictions and physical or mental illness. Whilst such needs may be related to offending, their assessment should not be confused with the process of risk assessment.

Risk assessment is a complex process, not a simple test. Risk assessment methods form a continuum of increasing sophistication to match the severity of harm. Just as in the medical setting, basic screening will precede referral onto more lengthy and intensive assessment as required.

Further clarification is required of the difference between the risk of re-offending and the risk of harm. Risk of re-offending can be carried out at a basic screening level. Risk screening is the first level of risk assessment, it can be undertaken relatively quickly perhaps with the use of a single actuarial tool and it is useful for the allocation of resources and for flagging up individuals who might warrant a more in-depth assessment. Unfortunately, validated tools for this purpose are currently only available for sex offenders, not for violent offenders. The RMA will commission a research project and the first phase of the development for a risk screening tool for violent offenders this financial year. Risk screening measures the probability of offending but it is based on groups, ie the method relies on historical factors and gives the likelihood of re-offending for a particular group of people, but it does not tell you much about an individual offender. Offenders subject to custody terms of between 15 days and 6 months who are thought to present a risk of harm are likely to be screened for risk of re-offending, rather than given a formal risk assessment which could not easily be undertaken in this relatively short custody period. While the difference between the two types of risk assessment could at first glance be seen as little more than a play on words, the difference is actually extremely important and the public should be made aware of this so as to avoid false expectations building up. Risk screening with actuarial methods does not measure risk of harm.

Risk of harm requires more intensive assessment. Assessment can be undertaken on individual offenders to identify factors which may lead to re-offending and to serious harm being inflicted. This can only be undertaken via formal risk assessment which involves information gathering via various sources, analysis, use of risk assessment tools and a full process to involve structured professional judgement. The time commitment for this to be undertaken properly for individual offenders and the dedicated and appropriately trained staff resources required for each individual offender mean that it would simply not be possible for the majority of prisoners spending less than 6 months in custody.

A basic principle in research on offender management is the need to target resources appropriately. In risk assessment this means allocating the most time and expertise to the assessment of those offenders at risk of serious harm to the public. The proposals in the Bill to undertake risk assessment in generic terms for all offenders serving a custody period of 15 days or more could have the unintended and unfortunate outcome of diverting resources from those who require intensive l risk assessment and would give false expectations to the public. The RMA's view is that the provisions in the Bill should recognise a continuum of assessment. This would allow for those offenders who have been risk screened, and the results of which show cause for concern, to have a more in-depth risk assessment undertaken. This would also allow for a more transparent and understandable position for the public.

Risk Management

One of the most important factors for the Committee to bear in mind when considering this proposed legislation, with its intention to improve public protection and to raise public confidence, is that risk assessment is no good on its own. Effective risk assessment has to translate into good risk management as a continuing process. Factors can change once offenders are back in the community which could change the level of risk posed by an offender. Therefore, the police and social work, who will be primarily responsible for the offenders in the community, must have the necessary resources in place to ensure that they can handle the resource intensive work connected with good risk assessment and management. The provisions introduced by the Management of Offenders Action and the introduction of MAPPA will be crucial here, but make very heavy demands on resources and skills. The proposals for setting conditions and providing support and supervision for such numbers may be unrealistic. Many offenders serving sentences of under 6 months will have significant needs and chaotic lifestyles. They will present a high risk of re-

offending, but typically not a high risk of serious harm to the public. This revolving door population which already clogs up prison resources may be increased by extending crude assessment of risk to those serving very short sentences, as they will have a high potential to breach their licence conditions.

The Role of the Risk Management Authority

The process of proper risk assessment is crucial to the overall risk management of offenders. Practitioners must ensure a consistent approach to risk assessment and risk management and follow best practice. The RMA has published standards and guidelines for risk assessment. These were prepared for assessors undertaking risk assessments for the High Court under a Risk Assessment Order. However, they are promoted as the basis of best practice in risk assessment for wider application. The need for consistency and best practice in risk assessment is publicised in many reports which have been compiled after tragic cases of sexual offending have occurred and more generally in SWIA's inspections of criminal justice social work practices. The RMA has a statutory responsibility to promote the use of best practice in risk assessment throughout the criminal justice sector. The RMA accepts that best practice can be an ever changing position given the developments and outcomes in research which informs best practice. The RMA has a statutory remit to keep up to date with developments, nationally and internationally in risk assessment and management and to advise Scottish Ministers on the development and review of policy in this area. Further, they will ensure that new and tested developments in the field are adapted into best practice guidance and disseminated throughout the criminal justice sector and that training is available for practitioners in this regard. The RMA will shortly publish the standards and guidelines for risk management. These will be for use with offenders subject to an Order for Lifelong Restriction but will also be for wider application for risk management in general.

The Parole Board

The RMA has some concerns about the demands which will be placed upon the Parole Board by the Bill to assess the risk of serious harm. In their current function the Parole Board receives information gathered over a period of years. Where there is a risk of serious harm these will include formal specialist risk assessments. This level of specialist risk assessment cannot be carried out for those serving very short custodial sentences, so, under the new proposals, will not be available to the Board when considering the risk posed by the majority of the offenders whom they are considering. This raises questions as to what criteria will be used by the proposed tribunals and the levels of experience, skills and knowledge which members may have in understanding the principles and technical issues around risk assessment.

Provisions Relating to Knives and Swords

The RMA has little authority to comment on that part of the Bill that seeks to limit the sale of non-domestic knives and weapons. However, the availability of weapons inevitably contributes to the commission of serious violent offending, and as such the RMA welcomes all effective means of reducing this eventuality. However, we would offer the view that the reduction of weapon related crime requires more than legislation. The Violence Reduction Unit recognises that cultural change promoted by a public health approach is required to reduce the level of violence in Scotland and we would recommend the work of this team to the Committee.

Summary

In summary, whilst the RMA welcomes the objectives of the Bill to assist in public protection and the rehabilitation of offenders it is concerned that the proposed extension of the assessment of risk of harm to those doing sentences as short as 15 days may in fact have the opposite effect. By bringing in many needy and chaotic lifestyle offenders who will typically present a low risk of serious harm, resources may be diverted from those who do present a risk of serious harm. We welcome the focus on risk assessment and management, but in our statutory function to advise on evidence based policy and best practice we would want to be reassured that appropriate structures with sufficient resources will be available.

Scottish Parliament

Justice 2 Committee

Tuesday 21 November 2006

[THE CONVENER *opened the meeting at 14:17*]

Custodial Sentences and Weapons (Scotland) Bill: Stage 1

14:18

The Convener: Item 2 is our fourth evidence session on the Custodial Sentences and Weapons (Scotland) Bill, for which Graham Ross and Frazer McCallum from the Scottish Parliament information centre are here to assist us. I welcome back to the committee our first witness, Fiona Moriarty, who is director of the Scottish Retail Consortium; she has previously given evidence on other pieces of legislation.

Is it likely that the proposed licensing scheme will help retailers to prevent non-domestic knives from getting into the hands of the wrong people?

Fiona Moriarty (Scottish Retail Consortium): As you know, convener, I came to the committee about a year ago to talk about licensing of the sale of knives, which was being debated under a different guise. At that point, we were very nervous about how constraining and restraining on retailers the proposed licensing scheme could be. However, many of our concerns have been allayed, specifically in relation to sections 43 to 46 of the bill, and we believe that the provisions will not be relevant to the vast majority of retailers that operate in Scotland.

The Convener: Could the licensing scheme create any problems for responsible retailers that sell not just non-domestic knives but, for example, sporting knives?

Fiona Moriarty: A few issues of definition remain. We have had some productive meetings with Scottish Executive officials in the past few months, and we have cleared up a few queries about the definition, which is a bit tighter. As I said, the provisions will not be relevant to the vast majority of what we would understand to be high street retailers that sell domestic or do-it-yourself knives. However, there may be a few grey areas, which will be seen only with the passage of time.

Bill Butler (Glasgow Anniesland) (Lab): You talk about grey areas. As you know, the need for a licence would not apply to the sale of knives that are designed for domestic use, but the bill does not contain any definition to clarify the differences between domestic and non-domestic knives, nor does it define what constitutes a sword. Are those grey areas likely to cause difficulties for retailers?

Fiona Moriarty: They are more likely to cause difficulties for trading standards officers. To take a couple of examples of Scottish Retail Consortium members, John Lewis and B&Q are not the sort of retailers that sell push daggers, death stars, butterfly knives or swords—those are nowhere

near the products that they sell. They sell Stanley knives, camping knives, food preparation knives, pen knives, craft knives and carpet knives. If the knives on that second list are classed as domestic or for use in the home or in a DIY environment, we will not be too concerned about the definition of a non-domestic knife. Unless trading standards officers are given additional resources and clear prescriptive detail in regulations, they may give you a different answer.

Bill Butler: Is more guidance needed and would it be helpful to retailers? You said that trading standards officers may have difficulties. If more guidance is needed, should it be provided in legislation or in non-statutory guidance for retailers?

Fiona Moriarty: Probably in non-statutory guidance. As a trade association we could play a part in that, and I have canvassed all our members. Trade associations are odd bodies. The SRC directly represents retailers but, as a large association, we also represent other retail trade associations. We represent the British Hardware Federation, which represents a plethora of other trade associations and includes a cook shop division. I know that those retailers were nervous about the products that they sell, which takes us back to the convener's point about hunting and fishing.

My advice to my members will be that they should do a thorough cost benefit analysis and decide whether, in a modern retail environment, they should in fact be selling knives that fall into the grey areas.

Bill Butler: If they continue to sell those knives, would non-statutory guidance help?

Fiona Moriarty: I think so. This takes us back to trading standards. Most retailers have good relationships with their local trading standards officers, and there needs to be a consistent approach to the licensing scheme, which needs to be transparent. We will need plenty of notice so that I can notify my members by running workshops, for example. When I travel round Scotland, I can ensure that if they sell what would be regarded as non-domestic knives, they know what is expected of them and that they should be talking to their trading standards officers. I would give advice and guidance as necessary.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): If there is to be a licensing scheme, which types of licence condition would be appropriate and which would you seek to avoid?

Fiona Moriarty: We just want consistency. If the regulations prescribe 10 different conditions, they should apply in every one of the 32 local authority areas in Scotland. My members, especially those who trade in more than one local authority area, tell me that if there are different conditions in different areas things become more expensive and it is far harder for them to manage. Local trading standards services can prescribe additional conditions to the licence as they see fit. I do not want to make too big a deal of that, because it will be virtually insignificant for the vast majority of my members.

Jeremy Purvis: What would be the significance of having additional licence conditions? A particular council or ministers might wish to place restrictions on marketing or to introduce requirements for identification over and above what is in the bill. What would be sensible? Where should the limit be set? At what point would things get difficult for the retailers?

Fiona Moriarty: The two key areas are costs and training. Anything that adds cost and requires a lot of additional training would concern the small number of our members to whom the provisions would be relevant.

Colin Fox (Lothians) (SSP): The witnesses from the Convention of Scottish Local Authorities estimated that local authorities would probably consider charging £50 or so for a licence. What consideration did the Scottish Retail Consortium give to the impact that that cost, along with training costs, would have on retailers? Does that concern you?

Fiona Moriarty: Some of my members would probably not thank me for saying this, but the larger retailers could absorb the cost of the licence, although onerous extra conditions would be a different matter. The ballpark figure of £50 for a licence for one store is neither here nor there. Smaller retailers, some of which will be trading on the margin, will have to think seriously about any additional cost.

In response to a question from Bill Butler I said that if retailers are selling non-domestic knives, they will have to do a cost benefit analysis. From the conversations that I have had with my members, I know that they will not be selling many knives, so the additional cost of paying for the licence and meeting the licence conditions will not be worth it and they will stop selling them.

Colin Fox: I take it that the cost of complying with the licence conditions will be higher than the £50 cost of the licence.

Fiona Moriarty: Yes, it will be considerably higher.

Colin Fox: Therefore, retailers will consider what they make annually against that cost to decide whether they will continue to trade in non-domestic knives.

Fiona Moriarty: If retailers have to install new or different closed-circuit television cameras; new till

prompts; new auditing systems, whether computer or paper based; new cabinets; and new security measures in store to ensure that the knives cannot be accessed by members of the public—as well as paying for the associated training—my best guess is that quite a few of them that sell only 10 or 15 such items a year will say that it is not worth while for them to continue to do so.

Colin Fox: Do you have an idea how many retailers are in that category?

Fiona Moriarty: I would have to go away and think about that. We have done an initial trawl, which showed that roughly 3,000 retailers in Scotland sell a form of knife, which can be a camping knife, a bread knife or meat cleaver. I provided Scottish Executive officials with that information. Given the minutiae of the definition of a non-domestic knife, such as a camping or fishing knife, only a handful of retailers are affected.

Colin Fox: This is an interesting line of inquiry. We are worried about the preponderance of people getting knives from abroad, or ordering them by e-mail. If the current outlets consider that the cost of complying with the licence will be too high for them to continue to trade in these items, we might find that outlets decide not to supply small stores and that people are more likely to buy knives abroad or order them by e-mail.

14:30

Fiona Moriarty: I am not too concerned about that. Reputable retailers will do a cost benefit analysis and decide whether to get a licence to sell such items. Responsible retailers will sell only to members of the public who can demonstrate, within the conditions of the licence, that they require the knife. There is a balance; a reputable customer will explain what they intend to use the product for.

Colin Fox: I am concerned that, if people are determined to get these knives but they cannot get them from licensed retailers, the trade will be driven underground.

The Convener: Following on from Colin Fox's concern about alternative suppliers, I know from when I was farming that many hardware stalls at agricultural shows and markets sell sporting knives. Does your organisation cover such suppliers? Some of them are based in England but they carry out transactions in Scotland. How will the bill affect them?

Fiona Moriarty: A number of rural suppliers sell—for legitimate leisure and rural use—non-domestic knives that will fall under sections 43 to 46 of the bill, but they are not members of the Scottish Retail Consortium. Some of them might be members of the hardware and garden retail association and a couple of other associations that I mentioned earlier. I could ask the British Hardware Federation how many stores will be affected. My best guess is that, if they sell a substantial number of products, they will apply for a licence and manage it, as retailers do for many other restricted products.

The Convener: If you could write to the clerks about that at your earliest convenience, that would be helpful.

Maureen Macmillan (Highlands and Islands) (Lab): Swords might be sold at sporting events that include sword fencing competitions. Because such competitions are held throughout the country, dealers turn up at various venues. They will have a problem in complying with the licensing conditions because their sales are not made from a permanent shop. They might not even have a permanent shop. They might make their living by selling products through the post—for example, to school fencing clubs—or by selling products at competitions. If they have to apply for a licence in every local authority area in which there is a fencing competition, they will be out of pocket. Will that be an extensive problem? People have written to us about the matter, but I wonder how extensive the problem will be.

Fiona Moriarty: I am not sure. It will be a problem, given the number of markets, fairs and other activities that are held throughout Scotland in any 12-month period and the number of agricultural shows with stalls that sell swords or other non-domestic knives. I notice that there is no evidence from the Society of Chief Officers of Trading Standards in Scotland, but I would be interested to know its views. I work with trading standards officers a lot and they are the guys who have to manage things day in, day out. I do not want to speak on their behalf, but I think they would say that they are underresourced and that the bill will place extra pressure on them.

Maureen Macmillan: Do you think that dealers will stop having stalls?

Fiona Moriarty: I imagine so.

Maureen Macmillan: If that source dries up, it will pose a difficulty for people who genuinely want to get hold of swords for fencing, highland dancing or whatever.

Fiona Moriarty: I think so. The committee will have some interesting times wrestling with Mr Fox's valid point that the illegitimate trade might be driven underground and the legitimate trade might be driven overseas or on to the internet.

Maureen Macmillan: Let us hope that somebody who is listening to this discussion will write to us and tell us about that.

Fiona Moriarty: I am due to meet SCOTSS on another matter in the next few weeks, so I will raise it with them myself.

Bill Butler: I return to swords, Miss Moriarty. The Executive has indicated that people who sell swords commercially will be required to take reasonable steps to confirm that a sword is being bought for a legitimate purpose. What steps can and should sellers take to achieve that aim?

Fiona Moriarty: Mr Butler, I will give a bit of a non-answer because, hand on heart, I can tell you that none of my members sells swords, so I have happily left the issue to one side.

Bill Butler: I will not indulge in any verbal fencing. Perhaps we will get some information from another source.

The Convener: I thank Miss Moriarty for making herself available and for the offer that she made to contact the clerks with further evidence for us.

I welcome the next panel of witnesses to the table. We are aware of the difficulties with the sunlight. We tend to put the ministers where the light shines in their eyes.

Professor Roisin Hall (Risk Management Authority): That is a good technique.

The Convener: The sun will move round, obviously, but if the witnesses would like to wriggle their chairs to more comfortable positions, they should feel free to do so, as long as they do not end up too far away from the microphones.

I welcome Professor Alexander Cameron, who is the chairman of the Parole Board for Scotland, and Niall Campbell, who is a member of the board. I also welcome Professor Roisin Hall, who is the chief executive of the Risk Management Authority—and the dazzled person at the moment—and Robert Winter, who is the RMA's convener. I thank them for coming along and hope that they will not be inconvenienced too much by the sun.

The bill aims to achieve greater clarity in sentencing along with better protection of the public and to contribute to a reduction in reoffending. Will it achieve those aims?

Professor Alexander Cameron (Parole Board for Scotland): The Parole Board knows from experience that good assessment of risk and consideration by a body such as the board are effective and that good supervision of offenders is an important part of protecting communities and helping offenders to avoid reoffending.

Broadly speaking, we would say that the bill will be welcomed. However, we have concerns about the enormous range of offenders who are encompassed in the bill, and we have laid out questions in our submission about the effectiveness of the potential of assessment for people on very short sentences. There are serious concerns about whether the bill can be applied to people on such sentences.

The Convener: Thank you for your written submission. I have no doubt that my colleagues will cover most aspects of it.

Professor Hall: We welcome the aims of the bill, but there are reservations about the way in which it is drafted that may get in the way of clearer sentencing, public protection and reduction in reoffending. The real issue is whether we can sufficiently target the offenders who present a risk of harm to the public. As it stands, that may not be possible.

The most important aspect of the potential of the bill is the concept of having some supported and supervised community provision in a sentence, so that any work that has been done in prison is followed up by a period of enabling the person to readjust to being back at home and, hopefully, to moving towards not reoffending.

The Convener: How will the bill improve public protection?

Professor Cameron: As offenders return to the community, there will be proper support for them and monitoring of their behaviour. There will be a focus on the things that are likely to return people to offending behaviour. That has been the benefit of people who are on sentences of four years and longer being on licence. Provided that the support is of adequate quantity and quality, extending its range should assist in protecting communities. Our concern is whether that will be feasible in terms of the entire scope of the bill.

Professor Hall: Better public protection requires resources. The committee should remember that risk assessment and risk management are opposite sides of a coin—they are inextricably linked. If you are going to consider following the assessment of risk by the management of that risk, you need to target the resources at the people who represent a risk of serious harm. The bill's current provisions spread the resources too thinly.

The Convener: I note in the Parole Board's written evidence that you feel that the bill has not been drafted correctly. Will you expand on that?

Professor Cameron: It concerns matters of technical detail in the bill. The way in which some of the sections are numbered and the sequence of the sections mean that they are slightly at odds with what is intended. Those are drafting matters. We also have concerns about whether the Parole Board can conclude its considerations and make a determination within the timescales. We suggest that the bill's wording could be reconsidered to

ensure that it does not create a cul-de-sac for the board.

The Convener: That is helpful. The bill proposes to reduce the number of Parole Board members who are involved in a tribunal from three to two. The committee is aware that your organisation has expressed concern about the way in which that might limit breadth of expertise, which is one of the Parole Board's strengths. You have made it very clear that the chair or convener must have a legal background, which limits the tribunal to one other member. Will you elaborate on that? It seems a particularly important part of your evidence.

Professor Cameron: The board is concerned about an intention in the financial memorandum to make what we consider to be a significant change to the way in which the board operates when it sits as a tribunal. It currently involves three members of the board and is chaired by one of our legal members. In terms of European law, that is important for our judge-like function. It is important that we are fair and impartial when we deliberate over cases and that we give them the fullest consideration.

The board values the range of experience and expertise that its members bring in taking extremely important decisions. Our concern is that narrowing down the tribunals from three members to two seems to be at odds with schedule 1, under which the range of interests that are represented on the board will be extended. On the one hand, the representation on the totality of the board will increase but, in the detail of what will be expected of the board operationally, there will be a reduction in that representation. We urge reconsideration of that point.

14:45

An allied point, which is equally concerning, is the suggestion that tribunal decisions will have to be unanimous. With only two members, it is almost inevitable that there would have to be a unanimous agreement. The issue is that, if the two members did not agree, it would be improper for one member to have a casting vote. A membership of three allows for a majority decision. The board reaches a majority decision relatively rarely—decisions are usually unanimous—but, to provide clarity about the consideration and the range of views that we take into account in reaching decisions, it is nonetheless important that that process is sometimes reflected in a decision that is made by a majority.

Our concerns are twofold—we are concerned about the reduction of expertise that will be available in any single tribunal and about the apparent intended move to unanimity as a requirement in decision making.

The Convener: I presume from what you say that the Parole Board would like tribunals to have more members and for there to be an uneven number of members, to allow tribunals to come to a decision when there is a spread of views.

Professor Cameron: We do not argue for more members on tribunals. One issue for the board will be the increased demand under the bill. To be honest, at present, we have to work hard and are struggling to keep pace with demand. An increase in the required number of members on tribunals would add to that issue. Membership of three is a fairly consistent position for tribunals—indeed, the name suggests that number. We certainly think that it is valuable to have an uneven number of members to allow for a majority decision.

The Convener: Basically, you feel that the number should continue to be three, as is the case at present.

Professor Cameron: Yes.

The Convener: You commented on European legislation. Will you explain clearly your position in relation to fair trials under article 6 of the European convention on human rights?

Professor Cameron: Everything that the board does must comply with European regulations and legislation, so we are bound in our decision making to act in compliance with article 6 of the ECHR. If we do not, we would most certainly be liable to judicial review, in which our position would be difficult to defend. We must ensure that the board's decision making complies absolutely with the right to a fair trial.

Bill Butler: My questions are for Professor Hall and Bob Winter of the Risk Management Authority. The RMA has expressed concerns about the proposed requirement to conduct a risk assessment of every offender who receives a sentence of 15 days or more. You say that that is not in line with best practice. As you know, the bill would make risk assessment crucial to release decisions on all prisoners who are sentenced to more than 15 days. For the record, will you set out your concerns in a little more detail and clarify the exact difference between the terms "risk assessment" and "risk management"?

Professor Hall: The field of risk assessment is complex, with terms that tend to be used without careful definition on occasion. We need to be clear about whether we are talking about the risk of reoffending, the risk of harm or the risk of serious harm. Those are three fundamental definitions that need to be considered in examining the proposed legislation. We welcome the recognition that risk assessment is incredibly important as a basis for

action plans on how to manage offenders to prevent serious harm. That, however, is at one end of a continuum—it is probably important to see risk assessment as a continuum.

It is true that we can screen offenders at a basic level and decide how we should allocate police resources according to the number on the sex offenders register, for example. The type of assessment that we would do at that stage is qualitatively and quantitatively different from an assessment of someone being considered for an order for lifelong restriction, for which, as members know, a full week of work is needed to work up the case.

My other point about the bill is that if we wish to assess people who serve sentences as short as 15 days, there is no way that we will be able to do anything that I would recognise as a risk assessment. As we said in our written submission, although we might be able to do some blunt needs assessment because people's needs are associated with offending, we have to be clear that they are not risk factors per se.

Managing an individual's needs is just as important as managing their risk, but we have to be clear about what we are talking about and trying to achieve. I use the analogy of going to see the doctor—the first time someone goes to see the doctor they describe what is wrong, he yawns and says, "There's a lot of it about today", but the patient has to have a lot of tests before they find themselves having a full body scan.

Bill Butler: So you are saying that if sentences are as short as 15 days, or even under six months, you cannot go into the necessary detail that would qualify for the definition of a serious risk assessment and the risk management assessment that flows from that?

Professor Hall: I think that I am saying more than that. We would probably not get much information even about the risk of harm posed by an offender who was serving a sentence of less than a year. If we are talking about risk of serious harm, we need more opportunities for gathering the information on which we make our analysis.

Bill Butler: Does the bill as currently drafted give the public a false sense of security because they might perceive that all prisoners have been risk-assessed and risk-managed and therefore everything is fine?

Professor Hall: It might give the public a sense of security, but it would probably give the rest of us the absolute heebie-jeebies because we know that the water would fall through the bottom. That is important in the light of your earlier point about the aims and objectives of the bill.

Bill Butler: Does the threshold of 15 days or more need to be changed?

Professor Hall: Yes. Like many other agencies that have made submissions to the committee, the Risk Management Authority feels that if you are interested in risk assessment, the cut-off point should be a one-year sentence. The aim of the bill is not just to assess; it is to manage. It takes time to manage actions in the custodial setting as well as in the community setting and to gather the information that flows from each to make everything make sense.

Bill Butler: As you said, it is a continuum, so the timeframe cannot be abbreviated as the bill proposes.

Professor Hall: If you abbreviate it, you make it a nonsense. Our concern is that talking about risk assessment as the bill does might lower the whole credibility of risk assessment. As one of the submissions to the committee said, we would then have another quango talking nonsense.

Bill Butler: I will not comment on that, but I hear what you are saying.

Robert Winter (Risk Management Authority): The profile of the prison population who are in for shorter sentences is significantly different from the profile of the others. There must be a sense of where the priority lies when protecting the public from harm, and it does not lie at the lower end of the offending scale.

It is true that the risk of reoffending is very high at the lower end of the offending scale. Such offenders often lead chaotic lifestyles and have great difficulty just managing their own lives. We are not saying that the range of agencies do not have a job to do to help such people be better in society. We need to minimise the reoffending of many of those vulnerable people in our society. Such offenders do not require a risk assessment process with all that that involves. If we could afford that, I would say from my broader experience that they would benefit from a needs assessment and some support, but that would come at significant cost, which would need to be considered.

Professor Cameron: The Parole Board is charged with determining whether there would be a risk to the public if someone were released. We are significant consumers of risk assessments, which are undertaken not by the board but by a variety of professionals we make use of. Risk assessments are included in the dossier that helps us to reach our conclusion on the matter. We also have a role in risk management, which is exercised through the conditions that we apply to a licence. Those conditions enable and assist supervising officers in the community to manage the risk as effectively as they can. Our concern

with the bill is that if people who have been in prison for a very short time are referred to us to decide whether the period in custody should be extended, we might not have information about how that view about risk was taken that would enable us to take a fair and reasonable decision. We have real questions about the quality of that information.

Another important resourcing issue is that, as a starting point, the board relies heavily on the trial judge's report, which describes in some detail what happened in court, what the circumstances of the offence were, what the judge's view is on the matters that the board should take into account and why the decision on the sentence was reached. If we are to deal with short sentences without something similar from sheriffs, we will find it difficult to know, frankly, what we are dealing with and what we are being asked to make a judgment on.

Bill Butler: The Parole Board made that point clearly in its written submission, but it is good that Professor Cameron has aired the issue today. There seems to be a difficulty on that issue.

Niall Campbell (Parole Board for Scotland): Another problem is getting through the process in the time that is available at the lower end of the sentence level. If we have just over 15 days, we will have very little time to obtain an assessment and, if the judgment is to be done fairly, have it considered properly by the board. By that time, the offender will have gone through the sentence and the matter will cease to have relevance.

Bill Butler: The bill will provide not just an added burden but, in a sense, a burden that the board will not be able to deal with because, if the information the board receives is lacking in quality and relevance, the board's involvement will, frankly, be useless or of little use. Is that what you are saying?

Professor Cameron: In most cases, it will be difficult to found a judgment on that very thin information and to be seen to demonstrate that we have reached a reasonable and fair decision.

Jeremy Purvis: I want to develop that line of questioning on resources. On the capacity to carry out assessments, the Parole Board's evidence takes a slightly different angle from that of the other organisations from which we have received evidence. I was quite struck by the Parole Board's written submission, which states:

"Experience over the years has taught the Board that a number of reports may be submitted late".

I have been trying to work out what would happen under the bill if the Parole Board was unable to complete its report on time at the end of the custodial part of a sentence. Can you help me out by saying what you would expect to happen in that situation?

Professor Cameron: In that situation, I think the sentence would have ended. Our concern is that we will need, in a very short time, reports from a variety of sources, not least of which will be a home background report from social workers in the community so that we know where the person will go and whether it will be suitable.

We frequently have difficulty getting reports in the timescales in which we need them. We occasionally have to defer cases because of that. If there were a larger volume of parole applications, the question whether services in the community, in particular, could keep pace with the demand would have to be asked.

15:00

Jeremy Purvis: What proportion of reports are late for one reason or another, often because of circumstances beyond your control?

Professor Cameron: I would find it difficult to give you a percentage figure for that. Social workers in the community are working very close to the wire turning reports around in time for our meetings. In the great majority of cases, we have the report to hand when we consider a case, but it is not infrequent that a report will arrive in what we call our second bag, which arrives only a few days before the meeting at which the case is to be considered.

Niall Campbell: The other risk is that the situation could be open to challenge if a decision is not reached within the required timescale—in the future, by the end of a custody part of the sentence; at present, by the end of a particular stage in a sentence.

Jeremy Purvis: Let us be clear. It is your view that, under the bill, the person would, nevertheless, be released?

Professor Cameron: Our view is that if the custody period had ended, they would be released.

Jeremy Purvis: So, simply because of the number of people involved and the short timescales involved in sentences of less than six months, a fair number of individuals could be released at the end of the custody part of their sentences without risk assessments of them having been carried out.

Professor Cameron: That would be the danger in complying with the provisions in the bill.

Niall Campbell: It depends on what the bill says about what happens when someone reaches the end of the custody part of their sentence and something has not happened.

Professor Cameron: As the bill is currently drafted, the Parole Board would have to reach its determination prior to the end of the custodial part of the sentence. If that were changed so that the board had only to commence consideration of the case by then—there would be debate about the appropriateness of that—the situation might be different. If we have to reach our determination before the end of the custodial part of the sentence, the process will have to begin very early so that we can ensure that all the information is available to allow the board to meet and conclude its consideration in time.

Jeremy Purvis: Thankfully, we have advisers who will be able to get the information to help the committee with that practical question.

Let us move on to another area in which you might be able to help me. How does the bill sit with the current procedure, whereby halfway through a sentence the Parole Board will consider whether to issue parole to a prisoner? Would that procedure be replaced, or would someone still be able to approach the board after they have served half the custody part of their sentence?

Niall Campbell: What you describe applies, at the moment, to sentences of over four years. When someone who is serving less than four years reaches the halfway point, they are automatically released. If someone is serving a sentence of over four years, they may be released at the halfway point if the Parole Board decides that that is an acceptable risk. If it decides that it is not, the person will be released at the two-thirds point, but still on licence.

Under the proposals in the bill, the release date would depend on the length of the custodial part of the sentence, which as we understand it would not need to be set at 50 per cent, but could be set at another figure depending on the view at which the judge arrived. As the end of the custodial part of the sentence approached, the board would have to consider whether to release the person, as Professor Cameron has described.

Under the present proposals, whatever happened, the person would be released at the 75 per cent point. That means that they would serve a period in the community on licence and under supervision. We consider that important.

Professor Cameron: There is nothing in the bill that would allow someone who was sentenced to spend more than 50 per cent of the sentence in custody to ask to be considered for release at the halfway point. The custodial part would be set at the point of sentence by the judge.

Jeremy Purvis: I have a final question, on a slightly different point. It concerns the setting of conditions. As I understand it, if the custodial part of a prisoner's sentence is set at 75 per cent, the Parole Board has a duty to set conditions when the prisoner is released, but there is no comparable duty if the sheriff sets the custodial part at any proportion other than 75 per cent. If someone were released from custody after serving 50 per cent of their sentence, no conditions might be set. How would that operate in practice?

Professor Cameron: I think that my understanding is the same as yours. We are not sure what is intended. It seems that people sentenced to six months or less could be released on a very simple licence—to be of good behaviour and to keep the peace. That is a licence for any honest citizen, but how meaningful will it be when there is no supervision? We have to help the offender to understand what the licence means. Simply issuing a licence without setting any other conditions would, we think, be of dubious value.

When conditions are applied, we regard them as tools for the supervising officer in the management of risk for that offender. As long as they are proportionate, we can apply any conditions to a licence. For instance, we can exclude someone from particular areas if there is a risk to the people there, and we can exclude sex offenders from parks and playgrounds. We can decide what is best. I describe the conditions as levers that supervising officers can pull when they are trying to ensure compliance by an offender. In the bill, it is not sufficiently clear how conditions will be applied.

Professor Hall: The conditions are crucial to good risk management. Risk management is about helping people to get their act together. We do not want to confuse that purpose with that of bringing people back because of nuisance behaviour. I accept that such behaviour is an example of reoffending, but it will not necessarily cause serious harm. That is where definitions come into play.

Jeremy Purvis: The formal definition of a short-term sentence is anything less than four years, if I understand correctly, but we have been talking about sentences that are considerably shorter than that. Whether in this bill or elsewhere, there might be scope to change the terminology so that we all know what we are talking about when we talk about short-term prison sentences. What do the Risk Management Authority and the Parole Board think the definitions should be? Is a short-term sentence 15 days, as the bill says? Is it three months? Is it six months with a supervision element?

Professor Hall: It depends on what you are trying to achieve, but we should all be using the same definitions.

From a consideration of evidence that other people have submitted on the issue of not looking

only at exit points from custody but at entry points, the Risk Management Authority feels that some short-term sentences could usefully be turned into community sentences rather than custodial sentences. That would have an effect on the prison population. If instead of talking about people on long-term or short-term sentences we were talking about people who might or might not cause serious harm or reoffend, we would be talking about different populations. That might be a more useful way of considering things.

However, we have to say that short-term sentences of under a year pose enormous problems for us in assessment and management.

Professor Cameron: I largely concur with that. Bear in mind that someone who, in accordance with the principles of the bill, was sentenced to a year would, in most cases, serve six months in prison. That is about the minimum length of time needed for any meaningful conclusions to be reached. Sentences shorter than that can make forming a view about risk inordinately difficult.

The Convener: Professor Hall, I thought I saw you nodding at that. Could you say, for the record, whether you agree with Professor Cameron's comment about a six-month period?

Professor Hall: Yes. With a sentence of a year, it is important for the judge to decide how long the person should be in custody.

Maureen Macmillan: What I am picking up from you is that you think that even a year might be too short a time to do a risk assessment and that there might not be the resources to do a needs assessment for everybody. What, then, is our view on combined sentences? Are we saying that we should not be considering such sentences for people who are being sentenced for a year or less and that they should get sentences in the community—or should they just be put in jail with no provision for supervision afterwards?

Professor Hall: No. The principle of risk management is important and is inextricably linked with risk assessment. We feel that the combined sentences are important and that there should be a period in the community. My background is in psychology. If you are trying to change behaviour, you do not do it only in laboratory conditions; you have to let the person generalise it into the outside world. Helping somebody to talk about their alcohol behaviour in prison is one thing; it is quite another when they go back down the road to the pub.

Maureen Macmillan: Even though it may be difficult and we may need a lot of resources to back it up, do you still believe that that is the right way to go?

Professor Hall: It is the most important part of the bill.

Maureen Macmillan: What discussions have you had with the Scottish Prison Service about how the Risk Management Authority could contribute to constructing the risk-of-harm assessments required by the bill, with regard to validation, training and setting guidelines, for instance? Is there any methodology for doing that?

Professor Hall: Yes. We are in close touch. As you know, I came from the Scottish Prison Service and I have retained a lot of contacts there. The arrangements that are already in place in the Scottish Prison Service for risk assessment and management are quite well developed—certainly as far as risk management groups for the risk-of-serious-harm people are concerned. Integrated case management is now used and the sentence management process has been developed into a process whose remit includes a wider range of individuals. We have discussed that in quite some detail with the Scottish Prison Service in relation to the bill, in relation to our own arrangements and in relation to the plans for the implementation of multi-agency public protection arrangements, because we obviously all need to work closely together on those issues.

As I said, risk management is a continuum. The types of tools you might use at different stages are rather different and they have their own strengths and limitations. If you are looking at the sort of needs that are sometimes associated with offending behaviour, you do not necessarily use a risk assessment tool, but you might use one that looks at, for example, substance misuse or medical problems.

If you are looking at screening in terms of resource allocation, your first port of call would be an actuarial instrument that looks at historical information to predict the probability of reoffending. It does not tell you anything of interest about an individual—like the instruments that are used for life insurance, the actuarial scale tells you what group the person belongs to, not what they will actually do—but it is of use because it could throw up something that needs further investigation.

Risk matrix 2000 should not be used to tell you how to manage an individual, but it will tell you if you need to look for more information. It is widely used by the police and by social work for that purpose.

When a little bit more information is required, the Risk Management Authority is working with the Scottish Executive Justice Department and with other agencies to introduce a dynamic supervision tool that looks not only at historical information but

at things that might change. That helps with contingency planning.

15:15

We have sponsored a Scottish version of a Canadian supervision tool called the level of service case management inventory. The level of service inventory revised is in current social work practice and the LSCMI is a revision to include case management principles.

We are working with the Justice Department on how to provide similar screening and supervision tools for the in some ways much more complex area of violent offending. A great deal of work has been done on sex offenders, and a number of tools are available in that area. There is a long way to go on violence, perhaps because it is an even bigger basket of related problems. We have undertaken to do some scoping with researchers who are working in the area, to see whether we can create a tool.

Once we move beyond screening and supervision tools to trying to manage a person who has the potential to be of very serious harm, we need a much more comprehensive holistic assessment that looks not only at the person's offending behaviour but at characteristics of the way in which they approach their life and at their personality characteristics. The unfortunate term psychopathy that is often bandied about refers to nothing more than a combination of particular characteristics. Those are the issues that must be examined if we are looking at someone's propensity to cause serious harm. It is an intensive process, on which a great deal of research has been done recently.

The concept of structured professional judgment, which involves not just looking at a clinician's impressions or historical prediction but taking the person in the whole, is important. From that, we can move to looking not just at what is wrong with a person but at what the protective factors are—the good things that are happening with the person and on which we can build. When we have some understanding or formulation of that, we can start to identify the situations in which the person is likely to cause problems of a serious nature. We can then get into detailed risk management—not just keeping an eye on the person or ensuring that they do not drink, but identifying the type of loitering around a playground that the police need to ensure is known about by everyone involved in the case and the action that needs to be taken. There is an intensification of the process all the way up.

We are trying not only to address our attempts at structured processes to the order for lifelong restriction, which we hope will apply to a fairly small proportion of our offenders, but to ensure that the standards and guidelines that we are publishing for risk assessment and risk management will be applicable across the range of assessment of offenders. Our role in supporting general best practice is as important as anything else.

Maureen Macmillan: Thank you for your helpful answer.

The Convener: You talked clearly about developing stages. One issue that is emerging at this point in the evidence-taking session is the prison population, which you said we need to examine. Did you mean that there should be evaluation of risk management prior to sentencing, when someone is not at risk of causing harm to the public but is likely to be given a prison sentence?

Professor Hall: I do not remember using the phrase to which you refer. A great deal of information is available around pre-sentencing, and it is often of considerable use to people who carry out assessments to assist the courts to decide on sentences. However, that is not an issue for prisons to consider.

Colin Fox: Earlier, you talked about an area that would give us the heebie-jeebies. Both organisations seem keen to stress the point that risk management is not and never will be an exact science. Given the levels of reoffending, I would like to know how accurate risk assessment is at the moment. How realistic is it for us and the general public to expect the Prison Service and criminal justice social work to accurately assess the likelihood that an individual will cause harm to the public?

Professor Hall: In any field—be it weather, cancer survival rates or reoffending—risk assessment is not much better than chance. That is why, when you are seriously concerned about the matter, you have to go beyond a probability estimate to much more detailed consideration of the particular situation. You cannot put numbers on those situations. They involve factors such as the age of a child who is in a certain situation with a person who is drunk. You have to get into real-life areas of risk management.

Colin Fox: When you assess offenders, what follow-up do you do to estimate or record the accuracy of that assessment? Do you keep records of how accurate your assessments were or how appropriate and effective the warning that you gave to the community was?

Professor Hall: In our directory of risk assessment tools and techniques, we say that we will approve only tests that have been done using validated tools that have been shown to have a better-than-chance rate of predicting reoffending.

I am trying to get across the fact that risk is not only a continuum in terms of where you start from; it is a dynamic process itself. You expect risk to change if you carry out effective risk management. Your criteria for what is going to change and—in terms of the guidelines that we are writing for the risk management plans—the monitoring of change and how you assess what is actually changing are important. You are looking at changes in the person's behaviour, in the way in which they see themselves and in how confident they are that things will work out.

Colin Fox: You are saying, quite rightly, that there is an element of chance, and that the environment that the offender is going back into and their preparedness to address their behaviour are also important. However, does the bill put too much expectation on the likelihood of the person's behaviour being changed?

Professor Hall: That is an important point. The public would like the issue to be black and white and for us to be able to say that someone is either a risk or is not, in the same way that we would all like to know whether we are healthy or not or whether it is going to be a good or a nasty day. Expectation management is incredibly important. The bill's intentions are good, but they could lead the public to think that the situation is a lot easier than it is.

Colin Fox: I am interested in your use of the phrase "expectation management", given that we are talking about managing the risk of offending.

The committee is only too aware of the increase in reoffending levels. We must assume that there is already some assessment of risk before prisoners are released back into the community. However, reoffending levels are rising. To what extent are we entitled to expect that that will be corrected by the bill?

Niall Campbell: Would it be helpful if I gave you the figures from research that the Parole Board did recently?

Colin Fox: You tell me what they are and I will tell you if they are helpful.

Niall Campbell: Okay; that is fair enough.

This research was reported in the Parole Board's 2002 report. It found that of those who were released on parole—that is, at the halfway point of their sentence, if their sentence was for four years or more—21 per cent failed their licence period. That means that they broke the terms of their licence or they reoffended. However, of that 21 per cent, only 7 per cent failed within the period that they were out on special parole, which is the period between halfway and two thirds of the way through their sentence. The remaining 14 per cent who failed did so during the time that they would have been out anyway—after they had served two thirds of their sentence.

Of those who were released automatically without parole, when they were two thirds of the way through their sentences, 35 per cent failed their licence period. That does not necessarily mean that they did something very dangerous or serious; they might have failed to abide by the conditions of their release or they might have offended in some way. We could look at it the other way around—65 per cent of those who were released on licence did not fail.

That is the most recent research that has been done on parole. The Parole Board takes the situation seriously and investigates what has happened.

Colin Fox: I am interested in the research; it is important. Can I take it that since you have focused on longer sentences—

Niall Campbell: We did so because the Parole Board is currently involved only when sentences are four years or longer.

Colin Fox: I am anxious to stress that we are well aware that reoffending rates are much higher among people who have served shorter sentences than they are among those—

Niall Campbell: Yes, and the offences are almost certainly less serious. As Mr Winter said, we are talking about people who are in for three months, then they get out and end up reoffending, but some of it is not desperately serious.

Colin Fox: I understand that. Not only are there lower levels of reoffending among people who have served longer sentences—if that is the way to put it—but, as you have made clear, reassessment is likely to have a greater effect with longer sentences than shorter sentences. At what intervals is the risk that offenders pose reassessed?

Niall Campbell: Professor Cameron is a former social worker and will be able to tell you that.

Professor Cameron: One issue is that, once someone is out on licence, the supervising officer effectively needs to keep the situation under review. Is the individual complying with the licence? Do they need to go into another programme, because they are finding some things difficult? Do other resources have to be brought to bear?

If the supervising officer is concerned about any of those questions, they can refer the matter back to the Parole Board via the Justice Department. We might then consider whether we need to issue a warning, to add conditions to the licence that would help to clarify what is expected of the offender, or to recall them to custody because

more work needs to be done and they pose an unacceptable risk.

However, when thinking about the question that you are asking, Mr Fox, I always say to people that we need to hold on to the fact that, by definition, risk means that sometimes something will happen. There would be no risk otherwise and the world would be straightforward. We are in the business of assessing risk and making the best judgment we can. Our skills in that area are improving all the time, and our colleagues in the RMA will have a significant impact on validating the various risk assessment tools that are being used. However, they are only tools. I constantly say to social workers and other colleagues that risk assessment is only a tool that has to be used alongside their knowledge, skill and experience to form a view of what is likely to happen and the resources that need to be brought to bear to reduce risk. The danger is that we all live in a world where the public and the media have expectations that a tool can be applied, the figures added up and the right answer reached, so there is no longer a problem. We know that the situation is much more complex than that.

Offenders frequently make good progress in prison and their representations to the Parole Board almost invariably assure us that they have turned the corner, that their life has changed and that things are going to be different when they get out. From experience, I believe that when people write that, that is what they believe and that is where they are at that point in their lives. However, when they return to the same environment and pressures that they came from, it becomes much more difficult for them to resist the things that led them into offending. The issue is complex. We can apply some tools to the offender, but there is a whole community of other pressures that we, as the Parole Board, cannot do very much about, although others do have responsibilities in that respect.

15:30

Robert Winter: A thought arose in the context of Mr Fox's questions. The position that we are in with respect to risk assessment and risk management is that the Risk Management Authority was established essentially as an acknowledgement that we did not have an adequate body of research. Different professions used different tools and courts received inconsistent reports, which were sometimes produced by highly idiosyncratic professionals doing their own thing.

We have made huge steps forward on assessment and have put in place a system for orders for lifelong restriction, which we want to be rolled out in suitable form. We have set out to ensure that a number of consistent, validated assessment tools are available and that professionals can talk a common language and present consistent information across boundaries.

However, the fact that the field of risk management is much less researched means that we are having to do original work. It is not that there is no international research, but there is no cohesive view. The area is much less developed, and we are working on that intensively. For OLR purposes, we will have to put out our first operational working draft next month. Over the coming years, we will do more work on that area to refine and develop our knowledge. In the light of Mr Fox's questions about the efficacy of risk management methods, I felt that it was worth while mentioning that.

Colin Fox: Sure.

I have two quick points about efficacy. I am probably thinking of longer-term prisoners. Is more than one risk assessment done during a sentence or is an assessment done only when a prisoner is being prepared for release?

Professor Hall: As you know, the preparation of a risk management plan is a statutory part of an order for lifelong restriction. The plan must be drawn up within nine months of the sentence being given and must be approved by the Risk Management Authority. Typically, it is prepared by the Prison Service or the state hospital, because the sentence is served in a custodial or a secure setting. Each year, there must be a review of how well the plan is working. If it contains any significant changes, such as a lowering of security or a proposal to transfer the prisoner or grant them escorted leave, for example, it must be resubmitted for approval. The plan is worked on continually.

In the guidelines, we have taken a great deal of care to point out the frequency of assessment and to explain how it might be carried out. The Prison Service already has a considerable amount of experience in that area, as does the state hospital, because many of the interventions have assessment processes built into them to determine whether an intervention has been useful. However, as Andy McLellan says, that is only half the answer. The issue is not whether someone can get 10 out of 10 on a programme; it is whether they can apply what they have learned.

In the prison setting, it is hard to identify whether a measure is generalising. We used to use proxy measures. For example, if an anger management programme had been run, we would assess whether there were fewer assaults on other prisoners or on staff. Before there were quite so many drugs around, we used to use the prevalence of drugs as a measure of the success

of work on drug misdemeanours. It is when people get back into the real world that such work becomes much more important.

Colin Fox: You spoke of the process as being a continuum. I take it that both now and under the bill there will be opportunities to carry out risk assessments as frequently as is necessary. In other words, assessments will be done at intervals. Even when a prisoner is in custody, it will be possible for another assessment to be done.

Professor Hall: The bill does not lay that out, but under our enabling legislation—the Criminal Justice (Scotland) Act 2003—our responsibility to approve risk management plans is not confined to orders for lifelong restriction. Any other risk management plan can come under the same structured format, when that is thought appropriate. In relation to serious offenders, that is an interesting possibility.

Niall Campbell: Another aspect of risk assessment is the evidence that we get from home leaves and placements, which are important to the Parole Board. Particularly if the offender is on a longer sentence, they may spend time going out daily from prison to a placement for up to five days a week, and they will also have home leaves. Those provide some of the evidence that Roisin Hall talked about, to determine whether the offender is putting into practice what they have learned from programmes in prison.

Colin Fox: I take it that the standard risk assessment includes things like a home background report and reports from the prison and criminal justice social work. Is there a case for using a standard risk assessment for all prisoners or is there a need for a variety of assessments to cover the range of short-term and longer-term prisoners?

Professor Hall: It is necessary to have a portfolio of levels of intensity. For prisoners who have complex patterns of offending behaviour, we must accept that we want not only to have a general discussion but to be able to use specialist techniques that examine their particular deviant fantasies or instances of domestic abuse, for example. A number of specialist techniques should kick in when we consider the risk of serious harm.

We took the decision not to go along with the idea that only one or two tools were necessary, but to consider accrediting an approach to risk assessment, as we had a responsibility to do for the OLR. I am still of the mind that that was a sensible decision. We chose to take the structured professional judgment approach for a number of reasons—I will not bore you with them here, but that approach stands up quite well—and then to approve tools on the basis of the research validation about which I spoke earlier, such as peer review and a tool's ability to do what it says on the tin.

The Convener: We have now got into an area on which the committee would love to conduct an investigation and review, but I ask members to focus on the specifics of the bill.

Jeremy Purvis: I hope that my question will be focused. What would the witnesses' reaction be if the bill was amended so that there was no requirement for a risk assessment to be carried out on offenders who were sentenced to a custody and community sentence of less than six months? Would that make a substantial difference to the risk of harm to society? I pick up from the witnesses' written submissions that a risk assessment for such prisoners is an unnecessary diversion of resources. Would the bill be better if it did not have that requirement?

Professor Hall: That would make a fundamental contribution to some of the problems that we are flagging up, although there are other things that might be quite useful.

Professor Cameron: It would certainly take a substantial number of people out of consideration, which would be one way of focusing attention on the areas that most require it.

Jeremy Purvis: The RMA indicates that there would be a high level of breach of licence among offenders who are on shorter sentences without a requirement for supervision—that is, those with a custody and community sentence of less than six months. What type of breach could there be? Would it simply be disorderly or bad behaviour, or would something more specific be involved?

Professor Cameron: We can speculate that the offending of many people who are on short sentences is often of a relatively minor nature, although I do not want to play down the impact that that can have. It is often repeat offending behaviour. People are given custodial sentences because other disposals have been tried. The most likely condition to be breached is the condition that someone is to be of good behaviour.

Professor Hall: I agree. They would be largely nuisance offences—they may be associated with drinking or drug taking. In some cases, such offending is almost incidental, because a person leads a sufficiently chaotic lifestyle. Much of it is not instrumental offending.

Jeremy Purvis: For the large majority of such cases, local authorities and the Prison Service will have risk assessment mechanisms. If it is not determined that a case is to be referred to the Parole Board, no conditions will be set on the licence and the prisoner will be released. Will that

make any impact on the cohort of individuals who already receive very short-term prison sentences?

Professor Cameron: As I said, being released with a licence that we understand would say simply that a person should be of good behaviour is no different from the situation that applies to us all, although the licence has the slightly added feature that it is part of a sentence. For many offenders who are—sadly—in and out of prison frequently, comprehending and absorbing what a licence means and using it as a tool that makes them say, "I really mustn't go back to prison," will be inordinately difficult, given the pressures that many of them face. As Roisin Hall says, drugs and, in particular, alcohol are often a significant factor in people's offending behaviour.

Colin Fox: I will ask about recall and revoking licences. Will you help us with apparently contradictory sections of the bill? Section 21 talks about recalling people to prison for any breach if they are out on licence, but section 33 requires the Parole Board to rerelease someone unless they pose a risk of serious harm. Will that lead to a revolving door whereby people who are released because they do not pose a risk of harm are then brought in because, strictly speaking, they have breached their licences?

The Convener: I say for the record that section 31, not 21, concerns recall to prison.

Colin Fox: I beg your pardon.

Professor Cameron: Colin Fox is right. A concern is that although the bill applies a single test to all situations of serious harm to the public, the test for recall is that a licence has been breached and that the Scottish ministers consider that revoking the licence would be in the public interest. Those tests are not necessarily at odds with each other, but they are different. The potential exists for people to go to prison on the application of one test, after which the board has no alternative but to release them because the serious harm test is not met. The serious harm test is higher than the tests that we currently apply—other than for people with life sentences—when an offence has been committed and there may be risk.

Colin Fox: So you think that the provisions appear to be at odds with each other.

Professor Cameron: Yes, they create the risk of people going in and out of prison.

Colin Fox: If the provisions are left as they are and you simply have to say, "This person is not a serious risk," so that the person goes back out of prison, is there a danger that resources could be diverted? Your time and effort would be better used on other cases.

Professor Cameron: That is a danger. Such decisions are important, as they are about people's liberty, so they would require full and proper consideration by the board. That would be another demand on the board's time. As things stand, we have considerable pressure on our time. We estimate considerable additional demand on the board, as the financial memorandum says. I know that members always hear people say that they need more resources, but if we are to deliver what Parliament determines, the resource implications will certainly need to be examined carefully. Within that, we will need to consider the best use of the resources that we have.

Bill Butler: My question is for Professor Cameron and Mr Campbell of the Parole Board. What role do you envisage victims playing in the board's decisions on whether prisoners who have been referred by the Scottish ministers should be released before three quarters of their sentences have been served and on whether to rerelease prisoners recalled for breach?

15:45

Professor Cameron: The board currently receives written victim statements in cases in which people have entered into the victim notification scheme, and we envisage that that will continue. The board always takes those statements seriously but, in reaching our decisions, we must be seen to be fair and impartial. That is a requirement under article 6 of the ECHR. The statements form part of the decision making, but we must weigh up all the factors.

On the basis of representations from victims, we sometimes include in a licence a condition that the offender must not approach the victim or members of the victim's family. Not infrequently, victims say that they do not want to bump into the person again in the village or small town in which they live, in which case we apply a condition that excludes the person from the area for the duration of their licence. The difficulty is that that condition applies only for the duration of the licence, so there is a danger that we mislead the victim into thinking that the condition will apply for good. In applying conditions, we are always concerned about whether they are proportionate and whether they would stand up to proper tests if they were reviewed.

Those are the kind of measures that we take. We take the victim statements seriously and we take into account the impact on victims.

Bill Butler: Mr Campbell, do you want to add to that?

Niall Campbell: The only way in which we can take victims' views into account is in considering

the question of risk, but there is sometimes a misunderstanding about that. Understandably, some victims think that an offender should never get out, but we have to consider whether the risk is acceptable.

Maureen Macmillan: Is it not the case that a victim could seek an interdict of some kind, such as a protection from abuse interdict? For example, if the case was one of domestic violence in which we wanted the offender to keep away from a particular person, it would be open to that person to seek an interdict.

Niall Campbell: Yes—under the appropriate legislation.

Professor Cameron: The person could not seek an interdict that would change the board's decision, but they could look to other legal remedies to protect themselves.

Maureen Macmillan: Yes—there are other legal remedies.

Professor Cameron: Absolutely. The great majority of victim statements that we receive, many of which are extremely touching, say that we should not let the offender out. We must balance that view with the advantage that there may be in releasing someone before the very end of their sentence, so that their re-entry into the community is supervised. That may be difficult for victims to understand, but for their longer-term protection and that of other people, it could well be the best action to take.

The Convener: Will the Parole Board write to the committee to explain what controls and support systems it thinks should apply in cases in which a victim says that they do not want the person to be released but you decide that it is better to get them back into the community under supervision? It would be helpful to have a statement of what you consider supervision should be.

Professor Cameron: We can write to you on that. The question covers a wide range of circumstances. Every case is different and the experience of every victim is different, other than that they have been a victim.

The Convener: You talked about, and mentioned in your written submission, the need for a definition of supervision. I think that the RMA mentioned the issue, too. I am turning the tables and asking you to give us a few suggestions on that.

Does the Parole Board envisage having to convene a large number of oral hearings in light of the decision in the Smith and West case on the entitlement to an oral hearing in certain circumstances? What would be the associated resource implications? In that case, there was a reference up to the House of Lords.

Professor Cameron: Our legal advice is that a growing number of oral hearings are likely to be required. Eventually, oral hearings could be required in the great majority of cases. We need to determine whether those oral hearings will be heard by three members or in different circumstances and how we will construct the process, but it is likely that there will be significant resource implications for us.

Niall Campbell: We already hold oral hearings for recalled prisoners as a result of the Smith and West decision. Of course, the tribunals that we hold for life prisoners are also oral hearings. That situation remains unchanged.

The Convener: The point of the question is that every bill requires a financial memorandum and the committee is charged with the duty of finding out whether it covers all the costs that a piece of legislation might incur. Perhaps you could send us a short note on the matter.

Jeremy Purvis: I wonder whether the panel can say something about curfew licences, which, as I understand it, will come into operation for any prisoner who is sentenced to three months or more. Might they also give rise to the risks that Colin Fox highlighted? For example, if an offender breaches a licence after their four weeks of custody, the matter will come back to the board, which will have to carry out a risk of harm test. Theoretically, someone sentenced to a year can serve four weeks in custody and then be subject to quite a normal licence, even though other conditions might well be set.

Professor Cameron: Curfew licences are useful in bringing a degree of control and order into people's lives, and the board will, from time to time, apply curfew and electronic monitoring measures. However, the feeling is that their effect can diminish the longer that they are sustained and the longer that people have to abide by their conditions.

The Convener: I thank Professors Hall and Cameron, Mr Campbell and Mr Winter for their full evidence. If the RMA wants to send us a brief note on any matters of relevance to the bill, the clerks will be happy to receive it.

15:52

Meeting suspended.

15:59

On resuming—

The Convener: I welcome the final panel of the afternoon, who are Dr Andrew McLellan, Her

Majesty's chief inspector of prisons for Scotland, and John McCaig, Her Majesty's deputy chief inspector of prisons for Scotland. You will understand the slight delay because of the interest in the evidence that we have received this afternoon. We look forward to receiving your evidence.

In your recent annual report, you state that overcrowding, along with slopping out, is one of the

"twin curses of Scotland's prisons".

The bill could lead to an increase in the prison population of between 700 and 1,100 prisoners. What is the likely impact of such an increase on the prison estate, prison staff and prisoners themselves?

Dr Andrew McLellan (HM Chief Inspector of Prisons for Scotland): The impact would be enormous. I am grateful that you started on overcrowding—whatever you wanted to ask me about, I was going to talk about it.

Overcrowding is a hidden pain. Because of that, people do not recognise the damage that it does. It is important to recognise that although the bill has significant merits, which I hope to talk about later, it will also incur a significant cost—increased overcrowding. You quoted the Scottish Prison Service's estimate that there would be between 700 and 1,100 additional prisoners. When we add that increase to the equation with the number of prison places being built and the normal increase of prisoners that we have seen every year since I took up office—although there is no connection between the two—it represents an immensely damaging impact on Scotland's prisons.

I have often said that overcrowding in prisons makes things worse for everyone. In "everyone", I include the Scottish public. Overcrowding significantly diminishes the opportunity that a prison has while people are in its care to make any change in their behaviour. Indeed, as I said in my annual report, it is not just that overcrowding makes prisons less effective; it also makes prisons worse. It makes it easier to get drugs into prison and it means that prisoners find themselves locked up for long hours, day after day and, worst of all, weekend after weekend. It makes it harder for prisoners to access the work that the law says they should do and which I think they should do. Overcrowding also makes it harder for them to access the education that they should have and which prison can provide. Whatever the merits of the bill, the increase in overcrowding that the Scottish Prison Service estimates will be a significant cost. There may also be a cost in public safety.

The Convener: Thank you. I also asked about the impact on prison governors and officers in the front line. Have you any views about how the increases could affect them and their ability to perform their duties?

Dr McLellan: In my annual report, which was published last month, I laid out nine evils of overcrowding. Significant among those are the pressures that it puts on all prison staff, especially when it is combined with what seems to be the inexorable increase in the duties that prison staff at all levels must perform, and with what appears to be a reduction in the number of prison staff. It is clear to me from what prison staff, prison managers and prisoners have told me that overcrowding makes the daily work of prison staff much more difficult. In particular, it makes extremely difficult the personal engagement between staff and prisoners that could be a real strength of the prison system but which is impossible as long as prisoners are locked behind their doors for hour after hour.

For prison governors, the difficulty is not that they do not have individual interaction with prisoners, but that they are spending a huge amount of time dealing with prison staff who are feeling stress and in addressing the almost arithmetical problem of how they are to find, if not enough work for all the prisoners, at least some work for enough prisoners. If they cannot find all the laundry arrangements that they should provide for prisoners, can they find adequate laundry arrangements for the large number of prisoners that they have? If they cannot provide progression through their system such that prisoners get a sense that they are moving to more privileged conditions, what incentives can they provide to help prisoners feel that they can move forward and that their achievements will, in some sense, be rewarded?

The Convener: I presume that your response is based on interviews that you have had with prison governors and prison staff throughout Scotland.

Dr McLellan: Yes.

Jeremy Purvis: I think that you understand the duties that will be placed on the Prison Service and local authorities to risk-assess every prisoner who serves a custodial sentence of more than 15 days.

However, first, I would like to ask about overcrowding. I do not know whether you have seen the submission that the Prison Service has provided to the committee on design capacity versus average prisoner population over the next five financial years. I think that it has been presented to both justice committees. The Prison Service estimates that, if no new build has been completed by the end of the fifth year, there will be a design capacity versus average prisoner population shortfall of 910 places. What impact will

that have not only on the requirements of the bill, but on the ability to provide any assessment of prisoners' needs?

Dr McLellan: If everything else stays the same, there will be a huge impact through the increase in the number of prisoners who share cells. At the moment, the Scottish Prison Service tries, as far as possible, to give prisoners who are serving long sentences cells of their own. However, increasingly, it is not able to do that. The figure that you have just cited would make it impossible for the Prison Service to provide prisoners with cells of their own.

That would have three impacts. First, given the effects on prisoners of sharing cells and the anxieties that prison officers feel about long-term prisoners sharing cells, it would not be foolish to talk about there being increased safety risks in prisons. Secondly, unless the increase in the number of long-term prisoners were accompanied by a significant increase in the number of places that were available in the open estate, it would be much more difficult for long-term prisoners to receive the opportunities to be tested in the community, to which Mr Campbell referred earlier. Community placements and home leave would not be available to them if there were no places for them in the open estate.

Thirdly, as far as short-term prisoners are concerned, in addition to the many other disadvantages that I have mentioned, it seems almost inevitable that they would increasingly be detained in prisons that were further away from their families, social workers and other agencies that might seek to engage with them in prison.

It is not a case of new difficulties arising; it is a case of the nine evils of overcrowding getting worse, which needs to be addressed.

Jeremy Purvis: Is there anything positive in the bill with regard to the situation? You hinted that there may be some positives in the bill; this is your opportunity to say what they are.

Dr McLellan: There is in the bill terrific merit that I welcome unreservedly, although I have reservations about overcrowding. That merit relates to the opportunity that the bill provides for supervision in the community for prisoners on release. I have often reflected that the most important time in a prison sentence is the moment when a prisoner leaves the prison gate. Under the bill, short-term and long-term prisoners—as they are now described—will not be released into nothingness, which is an extremely important gain.

The possibility that there might be some supervision of people being released who have homelessness problems, problems with addiction, problems with their families or problems with health is a very significant gain. In Holland there is no drug treatment programme in detention because of the belief—at which Professor Hall hinted—that such programmes are best undertaken in the community. In our present circumstances that is impossible, but the bill may offer opportunities not only for drug addiction programmes in prison but for continuation of such programmes outside. In my view, that continuity and supervision is the best part of the bill.

Jeremy Purvis: I do not want to put a dampener on your enthusiasm, but I draw your attention to the supervision requirements for which the bill provides. Section 27 states that supervision will be in place only for a prisoner who has received

"a custody and community sentence of 6 months or more".

Currently, such sentences are being served by 48 per cent of the prison population. The element of continuity and supervision will be missing for the remaining half.

The previous panel indicated that, if the number of offenders who go to prison to serve short-term sentences of less than six months is ratcheted up, the statutory requirement for risk assessments will not be effective in reducing reoffending and risk. Because there is a statutory duty to carry out risk assessments, the Scottish Prison Service may consider transferring its resources away from providing rehabilitation services for longer-term offenders. Although the intention is progressive, the bill will mean that there is a net negative outcome in both areas. Supervision will not be available to half of those who will be released from prison this week.

Dr McLellan: I accept that and will say a little about risk assessments in a moment. The possibility of supervision for half of prisoners is a great deal better than the present situation. I would be grudging if were to say that, because the bill does not make provision for everyone, it is not to be welcomed. Later there may be discussion of the value of supervision for offenders who have received sentences of less than six months.

I want to say a little about risk assessments for people who are serving very short sentences. I recognise the ineffectiveness to which both the Parole Board for Scotland and the Risk Management Authority drew attention. I also want to draw attention to the frustration that is likely to develop in prisons if there are repeated assessments of people who are serving very short sentences, the net result of which may be only three or four prison days or, often, no difference. If prison officers have to carry out such assessments regularly, although they and prisoners accept that they have no impact, it will lead at least to annoyance and, perhaps to contempt for the system, especially among prisoners.

16:15

Colin Fox: I want to look at the connection between rehabilitation in prisons and overcrowding. Over the weekend, I was struck by a news report about staff on duty at Barlinnie prison in Glasgow on Saturday night. I know that weekend evenings in prisons are long, starting at 4 or 5 in the afternoon. The report reminded me of two things: the evidence from the Prison Officers Association and something positive that your annual report flagged up—that 97 per cent of prisoners or offenders rated relationships with staff in their prisons as "ok or better". It seems to me that a great deal of attention is focused on and a lot of time is taken up by developing professional skills to be brought to bear for the benefit of offenders, which is a part of the Prison Service's work that works.

Did the Prison Officers Association's evidence strike a chord with you? It is worried because it has lost 700 staff in the past five years as a result of a standstill budget. It thinks that less prison officers' time is being taken up with interaction with prisoners during rehabilitative work and that prison officers are becoming more and more simply "turnkeys", to use its description. Do you recognise that picture? Given that the bill could add another 20 per cent or so to the prison population, should we examine such matters?

Dr McLellan: I am glad that you singled out that astonishing statistic from my annual report. It shows that prisoners acknowledge the good relationships that exist between prison staff and prisoners.

In my rather discursive first answer to the convener, I drew attention to an inevitable consequence of overcrowding: prisoners will spend more time in their cells with the door locked and they will often share cells with strangers. That consequence has been inevitable in the past and I am confident that it will be inevitable in the future. It is difficult to see such experiences as being significantly rehabilitative.

The Prison Officers Association spoke about its concern about prison officers' inability to do the work for which they have been trained—to which I referred earlier—and the stress that prison officers feel themselves to be under. It is for prison officers to speak about that stress rather than for me, but I will say that since I started in my post, it has been observable that prisoners have been less engaged in rehabilitative activities than they were previously. That is a direct consequence of overcrowding.

Colin Fox: Would it be fair to say that against such a background and taking into account the relevant facts and figures, it would be somewhat utopian to expect a turnaround in reoffending behaviour or better rehabilitative care?

Dr McLellan: That would be the case if there were no intention to provide additional resources to cope with the additional prisoners. I do not know whether there will be additional resources, so I do not know whether it would be utopian to expect such a turnaround.

I hope that I have spoken strongly about the damage that overcrowding causes. However, the introduction of supervision in the community for prisoners is a positive step. For reasons that I mentioned earlier to do with addiction, unemployment and housing problems, such supervision might significantly contribute to reducing reoffending.

Maureen Macmillan: I want to follow up on what Colin Fox said. I am concerned about prisoners with very short sentences who repeatedly go through the revolving door. Earlier, we heard how such prisoners can be released on licence, break their conditions and end up back in prison. The Parole Board can say that such people do not pose much of a risk, so they will be let out of prison again and so on. Prisoners on very short-term sentences of under 15 days are not supervised or supported in the community after prison. In that context, I am concerned that there is a disproportionate impact on women prisoners, who often go to prison for fine defaulting. Perhaps we are failing that section of the prison population with the proposals that have been made.

Dr McLellan: I have always tried to draw attention to the different circumstances of women offenders and to the different provision that the Scottish Prison Service attempts to make for them. Overcrowding is as damaging for women as it is for men. New accommodation has been built at Cornton Vale and nearly all convicted women and most women offenders are now detained in Cornton Vale—although, as members know, there is still a unit in Inverness and another in Aberdeen.

I do not mean to be impertinent, but I am not sure that the proportion of women who are imprisoned as fine defaulters is as high as the proportion of men. Many men are in prison because they have failed to pay fines and one of the most depressing parts of my most recent report on Cornton Vale concerned the significant increase in the number of women who had been convicted of violent offences.

Maureen Macmillan: I fully accept what you say about the change in what many women are being sentenced for.

Is it a problem for women as well as men that, during very short sentences, they will not receive the support that they need, because the 15-day rule excludes them?

Dr McLellan: If people are imprisoned for 15 days or less, they might get—apart from a deprivation of their liberty—a health assessment and a bit of advice on how to improve their health when they leave prison. That will be it. That will not be because of any unwillingness on the part of the Scottish Prison Service; it will be because of the kind of thing that Roisin Hall mentioned earlier. The assessment of needs and the delivery of what might be needed take a great deal longer than 15 days. It would be naive—no, that would be an impertinent word to use—it would be unreasonable to expect prisons to make a significant difference in the life of a convicted person in 15 days. However, I cannot imagine that people are sent to prison for 15 days with that hope in mind.

Maureen Macmillan: I cannot imagine why people are sent to prison for 15 days at all. One would think that other disposals were open to the bench.

Dr McLellan: I think that you are allowed to say things that I am not allowed to say.

Maureen Macmillan: Okay.

Will the bill reduce reoffending rates? We have heard about the revolving door and we have heard that the rates for short-term prisoners might not reduce, but will there be an overall reduction?

Dr McLellan: A little while ago, I agreed with Mr Purvis's suggestion that the bill is unlikely to make a significant difference for people who are sentenced to six months or less in prison. However, if appropriate resources are in place, it could make a significant difference to the reoffending behaviour of people who have the opportunity to engage in the new continuity between prison support and community support that the supervision provisions in the bill will make possible.

I cannot tell you how often I have come across stories of prisoners—often young prisoners—who have been released into nothing. I am glad to pay tribute to the Scottish Prison Service: in the four years that I have been in post, the service has made significant moves to develop much better links with communities, with social work departments, with housing authorities and with jobcentres. There are encouraging signs about a new engagement with social work under what Professor Hall referred to as the integrated case management system.

With proper resourcing, the supervision that the bill will require could make an important contribution to the reduction of reoffending.

Colin Fox: Maureen Macmillan has rightly asked about reoffending. The levels of reoffending are highest among people who are serving shorter sentences. Realistically, what can the Scottish Prison Service achieve with young men and women who are in the care of the service during short sentences?

Dr McLellan: You will know that the Scottish Prison Service itself believes that it can achieve nothing for people who are sentenced for less than 12 months. I have seen no evidence to contradict that.

To go back to a point that Maureen Macmillan raised, I have seen evidence of people, especially women, who feel safer in prison. That is a terrible thing to say and it cannot be a reason for the existence of prison. I have certainly seen people whose health has been improved by short sentences in prison but, in an ideal society, prison sentences would not be used to improve people's health.

I also recognise that our system of punishment does not exist solely to provide rehabilitation. People are sent to prison for other reasons as well. It might be possible to justify short sentences for deterrent or punishment purposes, although it is not for me to say that—it is for you. However, it is difficult to justify short sentences on the ground of rehabilitation.

Colin Fox: I know that, because when we visited Low Moss the governor made it perfectly clear to me that we expect an awful lot of our Prison Service when we send young men to prison for three months and then send them straight back to where they came from—I think that he mentioned Milton in Glasgow.

What proportion of people in our jails should not be there and would be dealt with better by alternatives to custody?

Dr McLellan: I can answer the question on different levels. First, my job is to inspect the treatment and conditions of prisoners. It is not for me to assume that I know more than judges. I say straight away that judges know more than I do about the right results of prison sentences. However, health care professionals in prisons, prison governors and my own eyes draw to my attention the increasing number of prisoners who have some kind of mental illness and are seriously ill. I ask a lot of questions, but there is only one answer to the question, "Will prison make their mental illness better?" If their mental illness is the cause of their offending behaviour, their prison sentence is perhaps not justifiable.

Secondly, we talked about fine defaulters. I do not disagree with Maureen Macmillan on the imprisonment of women in general. There is no doubt that, in the case of some women prisoners, the damage that is caused to their family is disproportionate to the nature of the offence.

Thirdly, I will comment on a matter that has not been mentioned today. In the past six years, there has been a great increase in the number of people who are imprisoned on remand and have not yet been convicted. They contribute significantly to our prison numbers. I understand that 50 per cent of them do not subsequently receive a custodial sentence.

Finally, I believe that nobody under 16 should be imprisoned.

Colin Fox: So we are talking about people with mental health conditions, fine defaulters, under-16s and the growing remand population. Those people could be dealt with through alternative means.

Dr McLellan: It is difficult to answer the question, "Why should they be in prison?" Addiction is at the centre of most offending. If we were concerned only with addressing their addiction, they would not be in prison, but there are other questions. How do we address the harm and damage that they have done? How do we address the needs of victims? How do we prevent other people from committing offences?

Colin Fox: Statistics show that the alternatives to custody have a far greater effect on preventing reoffending. Are you aware of those figures?

16:30

Dr McLellan: I questioned something that Maureen Macmillan said, so I hope that I am allowed to question something that you said as well. Your comment about the statistics is true of drug testing and treatment orders and projects that specifically address addiction, such as the 218 project in Glasgow, but I am not certain that the statistics on community service orders and other punishments in the community show as clearly as we would hope that such punishments are more effective at reducing reoffending.

The Convener: In conclusion, I take you back to the question that I started with, which was about the increases in prison numbers. Given your remit, can you recommend one thing that would help to reduce overcrowding in prisons?

Dr McLellan: We need to find the way to break the cycle. The use of work in the community as a punishment is not adequately funded because there is a sense that there is no public confidence in it. That might be driven by the press, which contributes to the absence of public confidence. Judges decide not to use alternative punishments because they are not properly funded but, in turn, that is because the public do not have confidence in them.

Jeremy Purvis: I want to correct myself. This might give you an opportunity to have a go at something that I say as well, just for neatness. I was incorrect when I said that half the average daily prison population serves less than six months. I refer to Sacro's evidence, which states that 48 per cent serve less than three months and 80 per cent serve less than six months. Only a small proportion of offenders will be subject to supervision in the community when they are released. Does your view that 20 per cent is better than nothing still apply?

Dr McLellan: It is for that 20 per cent of offenders that supervision is likely to deliver the best results, so it is valuable. It should not be thrown away.

The Convener: Thank you for coming to give evidence this afternoon. I apologise for the slightly delayed start, but obviously the committee goes with the flow when it gets a large volume of evidence, as we had in the previous session.

16:32

Meeting continued in private until 16:59.

SUPPLEMENTARY SUBMISSION FROM PAROLE BOARD FOR SCOTLAND

Thank you for your letter of 23 November in which you reminded me that the Parole Board had agreed to write to the Committee about a couple of issues that had arisen in the course of the giving of evidence on 21 November.

Taking firstly the matter of victims' issues, the Parole Board is of the view that the Victim Notification Scheme as presently framed goes some way to assisting victims of the extensive list of offences that are covered by the scheme. Where the offender has been sentenced to a period of imprisonment of 4 years or more the victim has the right to be informed about decisions made by the Parole Board and to make representations to the Parole Board about the release of the offender. Where such representations are received the Board has regard to these in arriving at its decision with regard to the prisoner's suitability for release on licence.

When the Board does direct the release of an offender on licence, or where the offender must be released on licence having served two-thirds of his or her sentence, the Board is required to attach conditions to the offender's licence. Such conditions require the offender to:

> Report promptly to the supervising social worker;
> Co-operate with the supervising social worker;
> Tell the supervising social worker if he/she changes address, starts a new job or changes his or her job;
> Reside in accommodation approved by the supervising social worker; and
> Not to travel outside Great Britain without the approval of the supervising social worker.

In addition to the fairly standard licence conditions outlined above the Board also attaches conditions that relate to the circumstances giving rise to the specific offence that the offender committed. For example where the offence was alcohol or drug related the Board often requires an offender to;

> Undertake alcohol counselling as directed by his supervising social worker; or
> Undertake drug counselling as directed by his supervising social worker.

In circumstances where the offence was of a sexual nature the Board regularly recommends that the following conditions are attached to the offender's licence:

> You shall not undertake paid, unpaid or voluntary work without the prior approval of your supervising social worker.

This condition is used where there is concern that the offender will seek to work in an area that will enable him to come into contact with minors who may be potential victims. This condition is not designed to stop the offender from going about his/her normal daily life, it does not preclude the offender from visiting shops or cinemas etc or from travelling by public transport as some have suggested.

> You shall not have contact with any child under the age of 16 without the prior approval of your supervising social worker.

This condition is used where concerns exist regarding the safety of minors whom the offender may seek to contact.

> You shall not enter parks, playgrounds or other places of recreation where children under the age of 16 habitually resort.

This condition is designed to ensure that an offender does not frequent areas that are commonly used by potential victims.

In addition the Board can attach conditions to an offender's licence requiring that they have no contact with a named individual or individuals who were victims of the offences. The Board may also attach a condition that excludes an individual from entering a particular town, village or street. The Board also has the powers to require the electronic monitoring of an offender. It is, however,

important to keep in mind that the conditions imposed by the Parole Board fly off as soon as the licence period expires. All licence conditions are, of course, designed to assist the offender to re-settle in the community and reduce the risk of re-offending thereby protecting the public and, so far as possible, ensuring that potential victims are protected.

Turning to the matter of Oral Hearings for recalled determinate sentence prisoners that the Board has been required to conduct, where appropriate, since the House of Lords' judgement of January 2005 in the cases of Smith and West, the Parole Board held 7 Oral Hearings in 2005 and, so far, 14 in 2006. The Board expects the number of such hearings to increase in future years as the Financial Memorandum indicates that the number of recall cases to be referred to the Board will increase by 396, or 108%. More recalled offenders are likely to request an Oral Hearing and refusal of such will be difficult to defend as the balance of the Board's work will focus more on the consideration of cases by way of an Oral Hearing if the Bill is enacted. That is because there is a presumption that the cases of all prisoners who are referred to the Board for consideration of continued detention under the arrangements outlined in the Custodial Sentences and Weapons (Scotland) Bill will be dealt with by way of an oral hearing. Estimates of the additional workload of the Board detailed in the Financial Memorandum indicate that:

Smith & West type Oral Hearings	34 cases*
Assessment of Need for Continued Detention	870 cases

* Probably understated.

Given that the average cost of a Tribunal or an Oral Hearing as detailed in the Board's Annual Report for 2005 is around £871, the additional costs to the Board are likely to be in excess of £787,000. From the information contained in the Financial Memorandum to the Bill it is clear that additional Board members, additional support staff and financial resources will be required by the Board in the event of the Bill being enacted.

I should like to take this opportunity to raise with the Committee a matter that I did not get the opportunity to address in the course of giving evidence on Tuesday 21 November. Members of the Committee will be aware that Section 1 paragraph (2) of the Bill provides that:-

> The Parole Board has the function of advising the Scottish Ministers in relation to any matter referred to it by them in relation to the release of prisoners.

I consider that it is important to point out that in relation to a number of its functions the Parole Board actually directs the Scottish Ministers with regard to the steps that they must take with regard to the release of certain prisoners. In the circumstances it may be appropriate to amend the wording of the Bill to reflect this position.

I trust that the foregoing is of assistance to the Committee.

33rd Meeting 2006 (Session 2) 28 November 2006

SUBMISSION FROM LOTHIAN AND BORDERS COMMUNITY JUSTICE AUTHORITY

Primarily, the purpose of Section 2 of this Bill is to enhance transparency and the public's confidence and understanding of the sentencing process. Indeed these objectives mirror those of the new Community Justice Authority structure. We therefore concur with the ambition of the Bill but are concerned that, as described, the Bill's purpose will not be fulfilled and may serve to further undermine rather than promote public confidence and understanding.

Central to Section 2 of the Bill is the assessment and successful management of risk. This too is the preoccupation of all the agencies involved in supervising offenders both in custody and the community. Understanding risk and need and targeting resources to reduce risk is a cornerstone of working effectively with offenders.

Staff working with offenders in prison, local authorities and the independent sector are a skilled and valuable resource. They are however over-stretched with year on year increases in the number of court assessments, supervision orders and custodial sentences. These staff can be most effective when able to work jointly with other agencies, prioritise their workload and target their skills on those offenders who pose greatest risk. An example of this quality of practice can be seen in the management of sex offenders across Scotland.

We are concerned that these proposals will jeopardise the ability of agencies to focus their resources on the high risk and high need offenders and will further dilute the workforce by requiring their time to be spent on tasks that are neither high need nor high risk. The fifteen day threshold for risk is, we would argue, far too low and will likely exceed the capacities of SPS and local authorities. In any case, offending behaviour that attracts such short periods of custody is, by definition, on the lower scale of risk. Additionally, the anticipated increase of 3000 licences with a supervision requirement will be a five fold increase in the demand placed on local authorities and independent providers.

Essential to the new Community Justice Authority role in Reducing Re-offending is the involvement of associated agencies such as employment, health, housing, education and addiction services. The CJA's are required to construct a framework that can enable these agencies to work together with the Scottish Prison Service and local authorities to meet need and manage risk. The proposals in the current Bill would, if enacted, challenge the current capacity of these agencies and will, I would suggest, have a negative consequence for both the Management of Offenders and Custodial Sentences legislation.

There are two matters which do not appear to have been considered in the evidence given to date. Both relate to assessment and, I feel, may provide assistance in meeting the Bill's objectives.

Each year approximately 50,000 Social Enquiry Reports are prepared across Scotland. These are pre-sentence reports which the existing legislation requires before a large number of offenders are sentenced to custody. Each report is required to contain an assessment of risk relating to re-offending and harm and also assess the level of need. These reports are routinely made available to the Scottish Prison Service. It is feasible that these reports could act as the initial assessment for many of the offenders who would be covered by the proposed provisions. It would also go some way towards developing a single shared assessment for Integrated Case Management which would follow the offender through their sentence and back into the community. Moreover, the use of these reports would negate the need for a further assessment, at least on those serving relatively short sentences.

The second matter relates to the Parole Board's decision making process n those offenders assessed as presenting high risk and being in need of community supervision. Currently, any person being considered by the Parole Board is required to have a Home Circumstances Report prepared by the local authority. These reports focus on assessing and managing both risks and needs, Their purpose is to advise the Parole Board of the likely impact the released offender will have upon their family, community and, where appropriate, victims. In addition, the report will advise the Board of the availability of local services and resources that will contribute to the

conditions of supervision. Most commonly these focus upon housing, addiction services and employment. There is, after all, little point in imposing a condition that cannot be practically met within the community.

In recognising both of these previously unmentioned areas of assessment they may, if considered within the Bill, go some way towards answering the criticism that the threshold and proportionality issues have not been adequately addressed. The Bill could therefore be amended to include a requirement for all determinate sentences to be preceded by a Social Enquiry Report, which in addition to its sentencing function, would be used as an early determination of those individuals that would require consideration by the Parole Board. Additionally, the existing arrangements to advise the Parole Board of the home circumstances and availability of community resources could be extended to include those who fall within the scope of the Bill. Although these amendments would carry additional resource burdens, they would allow for a better-targeted use of the available budget and to an extent, would offset some of the anticipated demand for prison- based assessments.

LETTER FROM SCOTTISH EXECUTIVE ON PART 3 OF THE BILL, 27 NOVEMBER 2006

1. A number of submissions requested a definition of a "sword" does the Executive have one? Scottish Fencing for example is concerned that fencing swords are not exempt in the Bill. Will historical fencing be an exemption - their submission refers to the use of blunt swords? Will exceptions be made for members of properly constituted re-enactment clubs and societies?

   Answer: The Bill will enable exceptions to be made to the proposed general ban on the sale of swords. The Executive intends to make exceptions for legitimate religious, cultural and sporting purposes including fencing and re-enactment (see paras 100 to 102 of the Policy memorandum). Blunt swords are capable of substantial damage even without a sharp edge and can of course be sharpened. The Bill therefore simply refers to 'swords', which includes blunt as well as sharp swords. More generally, whilst it will ultimately be a matter for the Courts, the Executive considers that the term "sword" is one which will be readily understood without the need for elaboration.

2. Has the licensing of individual martial arts swords been considered? As there is no one martial arts representative body how will the exemption operate with regard to martial arts organisations?

   Answer: '*Tackling Knife Crime: A Consultation*' set out a number of options for restricting the sale of swords, including individual licences (see paras 83 to 94 of the Policy memorandum). After considering responses to the consultation the Executive have decided to provide for exceptions to the general ban on sale for legitimate religious, cultural and sporting purposes including those martial arts organised on a recognised sporting basis (see para 100 of the Policy memorandum). The exceptions therefore focus on purpose rather than organisations.

3. Concern has been expressed by a martial arts organisation about the procedures for transporting a sword overseas to a training event and then returning to Scotland. What are the implications of the Bill?

   Answer: The Bill's provisions do not affect the law on carrying weapons in public. It is an offence under section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995 to have any article which has a blade or is sharply pointed in a public place without good reason or lawful authority. Transporting a sword to and from training would appear to be a good reason, though ultimately that would be a matter for the courts to decide in any individual instance.

4. Will there be a single licence option? If a retailer trades in more than one local authority will more than one licence be required? A submission from Allstar Uhlmann UK states that if they had to apply potentially for 32 individual licences, this would impact greatly on their business and the sport of fencing.

   Answer: Retailers will require a licence for each local authority area in which they have a retail premises, an internet sales operation or a dispatch centre. So any business with premises in

a number of different local authority areas will require to apply to each of them for a licence. This is the same as other existing licensing regimes.

From our discussions with Allstar Uhlmann we understand that they operate permanently from a single sales base but have temporary sales operations elsewhere at fencing competitions. Existing licensing regimes provide for this type of activity (e.g. for antiques fairs) through the provision of temporary licences at well below the price of a full licence. We envisage that a similar arrangement can be developed in respect of knife dealers licences and this is one of the issues which the Executive have been discussing with COSLA and local authorities as part of our preparations for developing the regulations for the proposed licensing scheme. The regulations will be subject to public consultation in due course.

5. Again from the same submission, will the Bill restrict in any way the current availability of many different specifications of swords used in fencing and many different blade types?

   Answer: See the answer to the first question.

6. Will the lending and giving of swords by clubs, coaches and the Fencing NGB be permitted by the Bill? Will lending or giving by businesses such as Allstar Uhlmann be permitted within the single licence? Will clubs and coaches acting as agents for the sale of equipment, be permitted to operate under the principle's single licence or would each coach require an individual licence?

   Answer: The general ban on the sale of swords will also extend to hiring, lending and associated activities to avoid enforcement loopholes (see paras 96 to 98 of the Policy Memorandum) but will be subject to exceptions for legitimate purposes such as fencing. In addition, where such lending is part of a business activity a licence will be required (though a separate lending licence will not be required for a business which sells swords and will therefore require a licence for that purpose). Private individuals who are not carrying on a business will be able to lend etc swords without the need for a licence (but will only be able to do so where the intended use is one of the specified legitimate purposes which will be the exceptions to the general ban on sale (or lending etc.) of swords.

7. What right of appeal will there be against forfeiture?

   Answer: Forfeiture will be decided on by the courts and will be subject to the normal appeal process (see section 27J, inserted by section 43 of the Bill).

8. Will a licence be required for a dealer / collector only selling at English trade fairs?

   Answer: All non-domestic knife and sword dealers who are carrying on business in Scotland will require a knife dealer's licence regardless of where their customers are located. If no aspect of the business takes place in Scotland, then the Scottish licensing scheme will not apply. Private individuals will not need a licence under the Scottish scheme.

9. A suggestion has been made that blade length be used as the criteria for imposing restrictions. Was this considered? Why was it rejected?

   Answer: It is proposed that a licence will not be required for businesses selling shorter pen knives, sgian dubhs and kirpans (where the blade is no longer than 7.62 cm/3") - see para 108 of the Policy memorandum.

10. There will be no barriers to internet or mail order purchase of knives etc. Is this a potential loophole?

    Answer: The Bill requires that Scottish businesses selling non-domestic knives etc. will require a licence, even where such sales are over the internet (see para 112 of the Policy Memorandum) . Even businesses which only dispatch non-domestic knives etc. from premises in Scotland (even if orders are taken outwith Scotland) will also require a licence.

11. What monitoring is proposed for the part 3 provisions?

Answer: Monitoring will principally be a matter for local authorities; probably mainly through trading standards officers. This is something which the Executive will be discussing in more detail with COSLA and local authorities as the licensing regulations are developed and implementation plans prepared.

12. The prison officers association stated that there is presently an anomaly whereby a prisoner caught with a knife in prison is not regarded as carrying a knife in public and therefore cannot be dealt with by the police or procurator fiscal. Would you confirm whether this is correct.

Answer: Carrying a knife in a prison is not an offence under Section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995 (Offence of having in a public place article with blade or point) since prisons are not public places. Section 49(7) provides that "public place includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.".

Possession of a knife in prison is however a breach of prison discipline rules and may also affect eligibility for Home Detention Curfew. Under the Bill's proposals, breaches of prison discipline rules for such offences will be a factor which can be taken into consideration as part of the risk assessment required by section 7(1) (and may thereby impact on the proportion of the sentence served in prison).

The police and Procurator Fiscal can also take action i.e. criminal proceedings if possession of a knife were accompanied by threats or other similar conduct which may amount to a breach of the peace. They may also take action where the knife is used, or there is an attempt to use it, or, in terms of section 41(1) of the Prisons (Scotland) Act there is evidence that an individual has brought the knife into the prison.

Custodial Sentences and Weapons (Scotland) Bill: Stage 1

14:40

The Convener: Item 2 is consideration of the Custodial Sentences and Weapons (Scotland) Bill. This is the fifth and final evidence session that has been scheduled for the bill at stage 1. I welcome Graham Ross and Frazer McCallum from the Scottish Parliament information centre; Ian Gunn, the governor of HM Prison and Young Offenders Institution Cornton Vale, and Bill McKinlay, the governor of HM Prison Barlinnie. Good afternoon, gentlemen.

The prison population in Scotland is at an all-time high. How does that affect the day-to-day running of prisons? The Executive has estimated that the proposals in the bill will lead to an increase in the prison population of between 700 and 1,100. Does that give you cause for concern? Would an increase in accommodation be required to prevent overcrowding? Those are fairly broad questions to start with.

Ian Gunn (Scottish Prison Service): As the convener said, I am the governor of HMP and YOI Cornton Vale—I have been in that post for eight weeks and two days, so I ask members to bear with me, please. Any comments that I make about Cornton Vale are based only on that period.

Overcrowding causes a problem for Cornton Vale. We are around or above our contracted number of places. The high number of remand cases and the high number of prisoners with mental health or self-harm problems who come to us can have a significant effect on the management of the establishment.

In terms of the future, I have not really had the opportunity to look at the bill, and it would be pure speculation—which I do not think the committee would be particularly interested in—for me to speak about what might happen in the future. Governors work to a performance contract, which is negotiated each year by directorates at Scottish Prison Service headquarters. It is my job to deliver that contract, on behalf of the prisons directorate, for Cornton Vale. I am quite prepared to talk about what happens in the prison now but, as I said, it would be pure speculation for me to talk about anything in the future.

Bill McKinlay (Scottish Prison Service): At present, Barlinnie prison is overcrowded. It is above its design capacity by 46 per cent and 23 per cent over capacity in terms of the contracted number. Obviously, overcrowding is not to be condoned, but it is not for me to determine what happens in the courts. We have to deal with

overcrowding, which impinges on every part of the establishment. We try to mitigate it as best we can in how we run the establishment.

I cannot predict the future either, and I have superficial knowledge of the bill. I am confident, however, about the work that has been carried out by the SPS directorates. Their people have experience, knowledge and competence that can inform the bill. I read the explanatory notes, and I cannot add to or subtract from the predictions that are made in them. I think that they have been made by operationally experienced people as well as by people with experience on the administration side. The work that was carried out involved a number of the directorates, so I would have to stand by what they have predicted.

I do not have a view on the future. Whatever happens with regard to numbers, I would be expected to meet the director of prisons and to determine, in relation to the business plan, what would be required to deliver the business for any year. That would include dealing with numbers, additional demands and the required resources and finances.

14:45

The Convener: We are not questioning either of you about policy; we are talking about what things are like on the ground as you try to manage the prisons for which you are responsible. How would you deal with the increased prison population that is predicted? I presume that you would both have to deal with a percentage of the increase.

Bill McKinlay: That would not necessarily be the case. I do not know about the finances for additional prisoner places in new prisons, but two new prisons are planned. Barlinnie prison has a capacity beyond which my board and I would put up our hands and say that we could not take any more prisoners, because if we did so we would not be able to meet the required standards. I expect that the predicted increase will be taken account of and that consideration will be given to available spaces and what might be done to reduce or cope with demand.

Ian Gunn: Cornton Vale prison also has a contracted number of prisoners, and additional places that we make available. We can also increase the contracted number if we have to do so. If I was concerned that the prison population was reaching a number that was not manageable, I would approach the deputy director of prisons, who is my line manager. No doubt the population management group in the prisons directorate would take the matter on and consider how numbers might be distributed.

Given that Cornton Vale is the only establishment that deals exclusively with female prisoners, there would be the opportunity for more accommodation to be provided at the prison—as happened last year. However, such a decision would not be made by me and would be the subject of long discussions.

Bill Butler: I hope that the witnesses can give me more expansive answers than they gave the convener. You both hold senior positions and I think that all committee members are keen to hear what you have to say. We are not asking you to expound on policy matters or to speculate wildly—as Mr Gunn suggested—outwith your experience; we are asking you to give us the benefit of your experience and judgment. We want to hear what you think and we hope that you can say what you think, because that is why we invited you to give evidence.

As you know, a policy objective of the bill is to reduce reoffending. What rehabilitative programmes for offenders are currently carried out in prisons? Mr Gunn, will you speculate on, or rather, tell us about that?

Ian Gunn: A number of programmes are going on in Cornton Vale, on cognitive skills and anger management. We are developing a violence programme for female offenders, but I do not know much about that programme yet. Many resources are directed into drug education and awareness, to try to get offenders off drugs or at least to keep them stable. We do a lot of work on mental health and much resource goes into trying to reduce self-harm in the prison. In addition, we run a full education programme and recreational regimes, to keep prisoners active during the day.

Bill McKinlay: Similar programmes at Barlinnie teach cognitive, coping and anger management skills. The first steps initiative is for drug users and the lifeline programme tries to prevent relapse in drug-free prisoners. A new life-coaching initiative, which involves the Wise Group, prepares people for employment. We have partnership arrangements with Jobcentre Plus, the Benefits Agency and church groups. A significant number of initiatives for prisoners are on the go.

Ian Gunn: My newness at Cornton Vale means that I sometimes forget the work that Bill McKinlay described, such as our work with Phoenix House or the routes out of prison project. We also work with Jobcentre Plus and housing departments. There are a host of opportunities for women offenders, for example through Open Secret and Cruse Bereavement Care, to try to reduce reoffending or deal with issues that might have contributed to their offending.

Bill Butler: I am grateful to both witnesses for delineating and being expansive on the number of programmes that aid the rehabilitation of offenders. What are the difficulties in providing

such programmes for offenders when prison numbers are high and many prisoners serve very short sentences?

Bill McKinlay: The committee already knows about our assessment process, which is called community integration planning. Every prisoner who comes through the door is assessed on a needs basis. Their needs can cover anything—housing, drugs or mental health, for example—and we try to facilitate work on those areas.

For prisoners with short sentences of under 31 days, we signpost and push them towards relevant agencies. Prisoners with sentences of 31 days or more come into the community integration plan, and those with sentences of more than four years come into the integrated case management system. First, we assess the needs that are identified by prisoners and ensure that those are actual needs and, secondly, we establish the length of time required for someone to get to the end of a course. At times, we can be fishing in the same pool for the same people.

The committee will be aware of community justice authorities—CJA chief executives will give evidence after us—and the possibility, through the Management of Offenders etc (Scotland) Act 2005, of joining up the work so that the courses and programmes delivered in prison are similar to those in the community. That means that if someone starts a course in prison, they may be able to finish it in the community, which is a step forward. Part of the issue with programmes is throughput and ensuring a consistent approach, which we are moving towards.

Ian Gunn: The population of Cornton Vale runs from prisoners on remand through to prisoners on life sentences, so we have just about every type of offender. We structure the prison on the basis that specific parts of the prison deal with specific types of prisoner. This morning, we had 338 prisoners in custody, 102 of whom were on remand.

The remand population can be volatile and fluctuates greatly, and many of the prisoners on remand are the most vulnerable and require a lot of attention. Particular resources are attached to remand work in two of the blocks in Cornton Vale, and we try to tailor interventions for short-term prisoners according to their sentence length. Basically, we ask how long we have to deal with an individual. For example, if a female offender comes in with a particular drug problem, we ask ourselves which issues we can address if she is doing just a couple of weeks. If she is doing a couple of months, we can do more, and if she is doing a couple of years, we can do more again. It is very much a case of trying to do something for the individual based on how long they are with us.

Bill McKinlay: I have a breakdown of assessment referrals, which may give an indication of the situation. Of the prisoners assessed on one day, 17 per cent required no action. Of the rest, 7 per cent had needs relating to homelessness; 9 per cent had needs relating to education; 10 per cent had benefits and housing benefits needs; and 17 per cent needed chaplaincy support. Chaplaincy support has what we call a poor box that gives immediate access to funds. It does a good job in that respect; some of the work can be done very quickly—looking after a prisoner's dog, for example. Those are the main needs. The other figures are smaller and cover issues such as careers advice, alcohol counselling, voluntary throughcare, specialist assessment and pre-release problems.

Bill Butler: I understand all of that, but what about those who serve very short sentences? Mr McKinlay used the term "signpost" when talking about prisoners who serve sentences of under 31 days. Does that mean being able to do only a little in a short time?

Bill McKinlay: Yes. Signposting means referring a prisoner to the particular agency that covers the need that has arisen.

Bill Butler: So it is not a coherent programme—you would need a lot longer for that.

Bill McKinlay: Yes—unless there was a mental health issue or something similar that required almost immediate attention.

Bill Butler: I am grateful for that information.

The Convener: I would be obliged if Mr McKinlay would pass his statistics to the clerks at the end of the meeting.

Colin Fox: In answer to Bill Butler, Mr McKinlay, you spoke about the integrated case management system. Against the background of the rising prison population that Bill Butler and the convener mentioned, the Prison Officers Association Scotland highlighted in evidence to us that there had been a reduction in staff numbers of about 600 or 700 throughout the estate in the past five or 10 years. Given the current pressures on the integrated case management system, how realistic is it that the Prison Service will be able to cope with the increased demand for assessment of prisoners who are in for 15 days or more?

Bill McKinlay: I do not agree that we are under that pressure. The integrated case management system is in its infancy. As well as putting in the system at Barlinnie, we took on another three administrative staff to cope with it. Bearing in mind my colleagues' predictions, if any new system for assessment or dealing with needs were to be decided on for the future, I would expect there to be commensurate discussion with me about the

resources, financial and otherwise, that I would need to deliver the desired outcome. However, I will not speculate.

Colin Fox: Okay, let us talk about predictions and resources. We have heard evidence that there might be an increase in the number of people who will need assessment from 3,000 to as many as 9,000 under the bill. It has been suggested to us that for every extra 1,000 offenders—we could be talking about 6,000 extra—we will need 18 or 19 staff to implement the ICM system properly. Are those estimates wildly right or wrong?

Bill McKinlay: Convener, I cannot comment on that. The people who look after the integrated case management system are the ones who determine the figures. You would have to tell me whether ICM will continue to be the means by which we carry out everyone's assessments.

Colin Fox: Let us assume that it will be.

Bill McKinlay: I have no idea at this stage. I cannot give a personal view on the matter because I have to go on the work undertaken by my colleagues, and what you quoted is their estimate. I cannot say yea or nay, or give an estimate that is above or below those figures.

Ian Gunn: I want to reiterate what Bill McKinlay said. When ICM came into being, we were given an assessment of the additional resources that we might require; those resources were put in place, which allowed ICM to function. ICM has been going since June; I have seen it working effectively in Peterhead, which is a long-term establishment, and in Cornton Vale. Whatever process is agreed in future, should the bill become law and should more assessments be required, we would expect, as Bill McKinlay said, to be informed about any additional resources that we were likely to need, and there would be a discussion about that at the time. We do not know whether ICM will still be the tool if a new process is put in place.

Bill McKinlay: Reductions and increases in staff take place in all organisations. For example, after we acknowledged that there was a mental health issue, we increased the number of our mental health nursing staff. We have increased the number of administration staff to allow us to put front-line staff into counselling and other roles. Like any organisation, we reconfigure. I need to know what the figures that Colin Fox quoted were based on. For example, are front-line staff what the union would term "white shirts"? I am not sure.

Colin Fox: Let me come at this from a different angle. I appreciate your reluctance to make predictions or forecasts, but the prison officers told us that there has been a reduction in overall staff numbers of 700, so we are not talking about an increase in resource.

Perhaps you can tell us how long it takes to train a member of staff to implement the integrated case management system. You must know that because ICM is being implemented currently. How long does the process take from start to completion before a member of staff is adequately skilled and equipped to implement the system?

15:00

Bill McKinlay: I need to think about that. Sentence management staff took over the integrated case management system, which is based on an information technology system called prisoner record 2. Training was given on the new applications for the joint approach that would allow everyone to input information into the PR2 system. I cannot specify the date of that training.

The system provides a means by which, through case conferences, the prison-based social worker and others meet to discuss, manage and oversee the management plan. They make referrals to other people—whether programme staff or others—according to each individual's needs. One individual staff member does not follow the whole system through.

The Convener: Instead of talking round an issue, if you would like to give the committee further information in writing, we would be happy to receive that. Please feel free to do that.

Ian Gunn: As Bill McKinlay said, training depends on a person's role in the process. I can talk with more authority about Peterhead, where, because all the prisoners have long-term sentences, some staff had a significant training requirement, including prison-based social workers and the person who co-ordinated the system. The personal officers of the prisoners involved required less training.

At a prison such as Cornton Vale, some staff require only awareness of the system, because they are not involved in ICM—they deal only with short-term prisoners.

Colin Fox: Those two angles are interesting. You said that significant training was required for staff at Peterhead and Cornton Vale. How long did it take to train them so that you were comfortable with their skills?

Ian Gunn: As Bill McKinlay said, ICM became another factor in our sentence management procedures. We had staff who were trained in and operated a sentence management process, and integrated case management was an add-on to that. For the first time, external social workers and others were involved in case conferences. Awareness already existed and the training was done as part of our normal training plan. Some officers had only a couple of hours' awareness

training, which they undertook during their normal shift.

Bill McKinlay: I am not sure of the time that is required to train and skill up staff in cognitive skills programmes, the STOP programme and the rolling STOP programme. If the committee wants that information, I can send it.

The Convener: I ask you to respond in writing as quickly as possible to all the questions that you feel that you have not fully answered today.

Jeremy Purvis: Colin Fox asked the question that I planned to ask, so I will ask another, brief question. What is the point of doing a risk assessment of the 80 per cent of prisoners who serve very short sentences when they pose no real risk to the public?

Bill McKinlay: We do not undertake risk assessment of short-sentence prisoners unless the risk management group notifies us of a reason to do so. We identify not the risk of reoffending but the risks that are associated with the needs that have been highlighted. An assessment is not made of dangerousness or the risk of serious harm unless a flag shows that an individual poses a significant problem or that a difficulty exists. If that happened, the case would be referred to the risk management group—each prison has one—and that group would forward on the information to deal with the risk.

Jeremy Purvis: Does that achieve the right balance and use resources properly?

Bill McKinlay: Yes.

Jeremy Purvis: The bill will mean that 9,241 admissions will require risk assessment through the ICM process. That seems at odds with the basis on which you said that you operate.

Bill McKinlay: I do not know what process will be used.

Jeremy Purvis: The ICM process will be used.

Bill McKinlay: Yes, but within that, I do not know what process will be used for risk assessment. I have just explained what we do for risk assessment of short-term prisoners.

Jeremy Purvis: I am forming a picture of the situation. The requirement in the bill for joint risk assessment by you and the local authority in the area that an offender came from or intends to go to on release is new and will apply to everyone who receives a custody and community sentence—a sentence of more than 15 days. That will be a big change to your process. At the moment, you decide whether to undertake risk assessment case by case.

Bill McKinlay: We do a risk needs assessment on everyone who comes into the prison at induction, and we will continue to do that.

Jeremy Purvis: Forgive me, but there is a difference between the needs assessment, which you have outlined clearly, and the risk of harm assessment that will be required under the bill.

Bill McKinlay: I cannot answer that because I do not know what is involved and how we would assess that risk, or even who would assess it.

Jeremy Purvis: At what stage will you find out what is in the bill?

Bill McKinlay: The SPS directorates deal with those matters for us, and we deal with operational matters. We have a superficial knowledge of the bill, but the directorates would be able to answer your questions about how we predict the bill will be implemented. I have no crystal ball. I should not make an assumption that the process will be ICM, although that looks like a good process. I cannot make those predictions.

Jackie Baillie: I am trying to be proportionate about this. I do not blame the two people sitting in front of us today, but I record my absolute disappointment that they cannot talk about the future and have no or limited knowledge of the bill. To set the context for our discussion, I must say that I find the correspondence that the committee has received from the SPS chief executive, Tony Cameron, to be a most unfortunate letter. I do not believe that these guys are telling us that they do no forward planning, have no two-way dialogue with policy colleagues and are somehow the passive recipients of information that is handed down to them. However, I do not blame either of the witnesses. They have been placed in an impossible position.

Convener, I think that these witnesses, whom I regard as having considerable expertise, have been placed in a straitjacket and I would like us to correspond with Mr Cameron on that point. It has been made incredibly difficult for the committee to do its job and for the gentlemen to provide us with robust evidence.

The Convener: In response to that, I repeat what I said at the beginning, on which the deputy convener agreed with me. We are not asking questions of policy. We are asking simply about the service's capacity to manage the chores that it will be given. We are not trying to tease out any comment about policy. I believe that we will take evidence from Mr Cameron later on.

Jackie Baillie: I look forward to that.

Jeremy Purvis: Forgive me for asking my question again. However, when the committee scrutinised the Management of Offenders etc (Scotland) Bill, we took evidence from David Croft,

Sue Brookes and Bill Millar, all of whom were in a position to give us evidence. David Croft told us:

"As governors in charge of prisons in the Scottish Prison Service, we very much welcome the Management of Offenders etc (Scotland) Bill.

Bill Millar said:

"Looking ahead, the requirements in the bill would provide a real opportunity to focus the resources where they can reap the best results."—[*Official Report, Justice 2 Committee*, 19 April 2006; c 1531 and 1536.]

In scrutinising the Custodial Sentences and Weapons (Scotland) Bill, we are trying to get a similar understanding of how the proposals will affect the operation of prisons. We were able to get that understanding when we took evidence on the Management of Offenders etc (Scotland) Bill, and that helped us enormously. The Custodial Sentences and Weapons (Scotland) Bill will affect every admission to prison. The bill will potentially make radical changes to the processes in prisons, with new partners being involved from the beginning to the end. We want to understand how that will have an impact on day-to-day operations. If the governors are saying to us that they do not know that at this stage, when will they be able to give us that information, as their colleagues David Croft, Sue Brookes and Bill Millar were able to do last year?

Ian Gunn: We will be able to do that when our colleagues in headquarters and the directorates who deal directly with the issue feel that they have something that they need to tell us. If they need our input into the process, we will be involved, as we were with, for instance, the introduction of ICM. I feel—I am sure that Bill McKinlay will agree—that we have a contract to deliver, we are extremely busy and we have a lot to do. Yes, we take an interest in what is going on around us, but our main focus is on delivering that contract at the moment.

Bill McKinlay: For me, the issue will be decided in my negotiations with the director of prisons. You asked about the effect and impact on the establishment. We will deliver whatever is required to be delivered and we will do that to the best of our ability. We will do so in a way that is consistent with the discussions that take place each year on the key performance indicators that we are set. We are not being difficult, but we are unable to predict the impact of the bill. I will not know that until my colleagues come back to me.

I would be concerned if I had to come back to the committee and say that I was not getting the resources. However, I do not think that it is like that, and I do not want it to be like that. It would be rather irresponsible of anyone to think that the bill could be implemented without some form of resource or financial backing, but that discussion still has to take place at an operational level.

The Convener: On the question of what happens currently, I turn to Bill Butler.

Bill Butler: I hope that I can reassure you, Mr McKinlay and Mr Gunn, that we know that you are not trying to be difficult. I will leave it at that; you know what I am saying.

I would like to ask about something that is currently on the go, and I am certain that you will be able to give us a detailed answer. What is the assessment process for prisoners who are released on home detention curfew? You must have thoughts on that. What can you tell the committee? Mr McKinlay, would you like to answer first?

Bill McKinlay: Let me just get my glasses so that I can look at my paperwork.

Bill Butler: I can understand and sympathise with that.

Bill McKinlay: It is just age.

Bill Butler: Same here.

Bill McKinlay: Let me give you an interesting current statistic. Barlinnie has had 126 home detention curfew releases since the June initiation of the policy and only 12 recalls: three were for offending, two of which were for breach of the peace and one was for domestic violence. There are statutory exclusions from HDCs. Rather than read them out, I can give you the relevant written information.

Bill Butler: If you could relay that information to the convener in the usual way, that would be helpful.

Bill McKinlay: Basically, we use the statutory exclusions and SPS risk assessments to ensure consistency in our approach to HDC releases. The risk assessment will recommend high or medium supervision—in other words, it assesses whether there is a security risk—and will involve consideration of whether a prisoner has a history of sexual offending or domestic abuse or violence. We have a set format and take a consistent approach to HDC when assessing somebody for release.

Bill Butler: Is that perfectly manageable? Would you say that the assessment process for HDC releases is working well?

Bill McKinlay: It is in its infancy.

Bill Butler: So far so good, though?

Bill McKinlay: So far so good. However, as we said, resources were applied to the implementation of the Management of Offenders etc (Scotland) Act 2005, and we were involved in the loop and in deciding how best to apply the resources to achieve what was required.

Bill Butler: I understand that. However, that seems rather contradictory, given my colleague Mr Purvis's comments on what your colleagues were able to say at a much earlier stage in the passage of the 2005 act. Nevertheless, I am grateful for your comments.

Mr Gunn, what is your view?

Ian Gunn: Exactly the same process is followed at Barlinnie and at Cornton Vale. I have come from a long-term establishment where HDC did not apply, so not only is it the case that HDC is in its infancy, but I am also in my infancy in applying it, so I am thankful for Bill McKinlay's greater knowledge of the process. There is a consistent approach, which seems to be working, in that we are releasing the right type of offender on home detention curfew.

Bill Butler: Could you supply the figures for Cornton Vale in writing? That would be handy.

Ian Gunn: Yes.

Bill McKinlay: Just as a point of information, one of our colleagues, a governor, sat on the Sentencing Commission.

Maureen Macmillan: I would like to ask about licence conditions, which the SPS sets when somebody is released into the community after serving part of their sentence. What are the most common causes that result in a licence being breached and the offender being returned to custody? What sort of things would cause somebody to be recalled?

Bill McKinlay: A minor breach, domestic violence, a report of disturbance, relationship breakdown, entering licensed premises, if that was not permitted—it depends on what is on the licence for each individual.

15:15

Maureen Macmillan: I would like to ask Ian Gunn to talk about, if he has not already done so, the needs that women prisoners might have. Do they have any specific needs in the context of the bill that might not have been mentioned?

Ian Gunn: As I have already mentioned, we find that women offenders can have self-harm issues and mental health concerns. They also seem to have more family issues, in that women who come to prison may have a direct responsibility for children, which is not always the case with male offenders. For example, if someone who has taken their children to school in the morning is then put into prison, there might be no one to pick up the children. Such issues have to be dealt with, as well as issues around accommodation.

Maureen Macmillan: What sort of breach of licence conditions would be likely to require the return to prison of a woman who has been released on licence?

Ian Gunn: In my relatively limited experience, I have seen very few breaches. In fact, the only one that I have seen was for alcohol abuse—the offender ended up not turning up for an appointment. I think that I am right in saying that female offenders are less likely to breach their licence conditions than male offenders, but I have still to learn about that.

Maureen Macmillan: So something as minor as not turning up for an appointment could result in someone being brought back to jail.

Ian Gunn: If it was the first time that such a thing happened, it would not result in a return to jail, but if someone turns up clearly the worse for drink or if they have taken drugs, that would be a different matter.

Maureen Macmillan: Yes. We are concerned about the revolving-door principle: people are brought back to jail for something that would not seem to pose a risk to the community and then the Parole Board for Scotland lets them out right away because there is no risk.

Bill McKinlay: The other day, I spoke to 12 short-term prisoners and told them about the bill's intentions for prisoners who go out on licence. Their view is that no one goes out with the intention of breaching their licence conditions. They had mixed views on the proposals and whether they would benefit from them, but the issue that they brought up was who would police the licence in the short term. Basically, however, they said that they do not leave prison intending to breach their licence conditions.

On an earlier point that was made about breaches of licence conditions, sometimes a person who is in breach is recalled, although if they had appeared in court, they might have received only a fine or some other outcome. Of course, that is for the courts to determine.

The Convener: Thank you both for coming along. I appreciate the position that you are in, although I tried to make it clear that we do not expect you to be accountable for policy. I look forward to receiving the written evidence that you have offered to send to the clerks. The committee will be pleased to have that because it will help us with general background information. The bill is still at an early stage and, as you will appreciate, several issues have arisen since we started on the process. I wish Mr Gunn good fortune in his new position.

The committee will now take a two-minute break.

15:18

Meeting suspended.

15:23

On resuming—

The Convener: I reconvene the meeting. A decision has been made, in agreement with the minister, to defer consideration of the affirmative Scottish statutory instrument until next week's meeting. There will also be a slight change in the running order. I am grateful to the community justice authority witnesses for allowing their evidence to be moved to after the minister's evidence to enable her to attend to a personal matter.

We are grateful that Johann Lamont is here. I welcome her in her new role as the Deputy Minister for Justice. We will have a lot of dealings with you over the next few months, minister, with regard to Executive legislation, to which we look forward. I also welcome Tony Cameron, the chief executive of the Scottish Prison Service; Valerie Macniven, the head of the Scottish Executive's criminal justice group; and Charles Garland, from the Scottish Executive Legal and Parliamentary Services.

Minister, we have heard much expert evidence to the effect that the bill may not deliver on its intended aims. Please explain the general ways in which you believe that the bill could be said to enhance public protection, reduce reoffending and increase public confidence in the justice system.

The Deputy Minister for Justice (Johann Lamont): Thank you for your welcome, convener. I genuinely look forward to working with the committee over the next period. I have a record of recognising the critical role of committees in helping to shape legislation, and I am happy to be as co-operative as possible with the committee. I acknowledge that you have reordered your agenda in order to take evidence from me, and I would be happy to respond in writing to any questions that are raised after my departure this afternoon.

You will be aware that I come relatively fresh to this area of work, so I will be more cautious than normal. I hope that you understand—recognising the significance of what appears in the *Official Report*—that I will need to refer to officials questions on the technicalities of this important bill. I do not want to mislead anyone through my lack of expertise and experience or even my ignorance. I trust that you will accept my responses in that spirit.

The Convener: That is a generous comment, minister. Thank you.

Johann Lamont: I now turn to the bill. Will it do what it says it is going to do? As with all legislation, it is not that somebody somewhere has decided that it is the solution and therefore the Executive is determined that it is going to work, regardless of what anybody says. We will work closely with all those concerned as the bill progresses and after it is enacted to ensure that it does what it is intended to do. In considering any legislation, we are always mindful of the law of unintended consequences, and we will keep anything that we do under review.

It is important that we give people confidence in the system by enabling them to understand more clearly how sentence management works. The bill recognises the importance of working with offenders during their time in custody and that the custody part of a sentence is important in making people recognise that there are consequences to their actions. However, when offenders leave prison they will be on licence and people will still be working closely with them. That is a strategy for addressing the problem of reoffending.

The bill will create clarity and give people some certainty about sentencing. People will see that a sentence does not end with the custody part, and that there is progression while the person is in jail and after they have been released from jail to help them to address their offending behaviour and to reduce reoffending. People—especially young people—will also recognise that there are consequences to their actions, and they may be deterred from offending behaviour when they see what happens to those who have ended up in the system.

We are seeking certainty. We recognise the role of victims, and a lot of work is going on around that, far beyond the bill itself. We are also seeking to address the issues that offenders face and we are trying, through the custody and community parts of sentences, to address offending behaviour. The fact that we are challenging offenders should give people confidence in the system.

The Convener: On the issue of people's confidence in the system, I have little doubt that, during this session, you will be asked questions by the committee about the clarity of the sentencing process. If you had a simple message to send to the public, to give them confidence in the proposed new sentencing procedures, what would it be?

Johann Lamont: When a sentence is decided in court, an explanation will be given of how that sentence will work, so that people will know what to expect. We recognise the role of victims in the justice system, but we also recognise the challenge for all of us if we do not address and seek to deter offending behaviour. In attempting to

do that, we recognise the pressures and tensions in the judicial system. We propose a planned, secure process. What we say is what we intend to do. At an early stage, when the court decides what the sentence will be, people will understand what that sentence will mean both for the offender and for the community.

The Convener: The Sentencing Commission has suggested that the financial viability and procedural fairness of its proposals possibly require a downward recalibration of sentencing to take account of the additional burdens that compulsory post-release supervision places on offenders. Such a recalibration is not proposed in the bill. Will you explain why?

15:30

Johann Lamont: There are a lot of technical issues there. I will ask officials to respond to them.

Nothing in the bill requires judges to change their sentencing practice. We are talking about the way in which we manage sentences once they have been decided in court. There may be a broader issue about which offences we regard as sufficiently serious—the committee will be aware that the Sentencing Commission has addressed and reported on consistency in sentencing. The bill, however, deals with the next stage, once sentences have been identified, and how we work with those who have been given those sentences. We are not talking about categories of offence and which sentences should attach to them. That is a much broader issue than the one the bill addresses.

Valerie Macniven (Scottish Executive Justice Department): The reference to recalibration takes the committee back to provisions recommended in the Sentencing Commission report that sought to apply parts of the existing sentencing regime under the Prisoners and Criminal Proceedings (Scotland) Act 1993 while at the same time importing the new policy. Those quite complicated provisions would have required the sentencer, in considering the sentence that they were going to impose under the new regime, somehow to have regard to the previous one. In considering how best to move forward, ministers took the view that it would not assist clarity in sentencing if the future legislation tried somehow to merge the two regimes. That important factor was taken into account when ministers decided not to follow the Sentencing Commission's precise recommendations on recalibration.

The Convener: How will the Executive and its advisory groups come up with a clear answer to the Sentencing Commission's question? Presumably, the commission is talking about the expected capacity of the system to be able to provide what is indicated in the bill. Are you saying to the committee that there will be no need for recalibration in any form, because the capacity to do what is being suggested will exist? If that is the case, when will it exist?

Valerie Macniven: The minister may want to come back on some of the more strategic points. The detailed information set out in the financial memorandum takes each element of the policy in the bill, costs it and shows how it will be resourced. When the Sentencing Commission made its recommendations, it was not to know what would be in ministers' minds on the various elements, how they would be costed and how the costs would be set out in the bill. I cannot get into the mind of the Sentencing Commission, but in its report it tried to provide answers on sentencing, whereas ministers have taken the view that the sentencing regime should be left as it is for the time being. There have been further recommendations on consistency in sentencing, which ministers are still considering.

Jeremy Purvis: I welcome the minister to her new position. I have a brief question on terminology in the bill. In deciding the custody part of a sentence, the judge will have to

"satisfy the requirements for retribution and deterrence."

What will judges have to take into account with regard to retribution? What is the Scottish Executive's definition of retribution?

Charles Garland (Scottish Executive Legal and Parliamentary Services): The intention behind the framing of the bill in that regard is dealt with in the three paragraphs in section 6(4). Section 6(4)(a) mentions the seriousness of the offence or of other relevant offences. Section 6(4)(b) refers to previous convictions. Section 6(4)(c) relates to a provision of the Criminal Procedure (Scotland) Act 1995, which is on the timing of a guilty plea. The Executive's understanding is that those three paragraphs constitute the main elements of retribution and deterrence.

Jeremy Purvis: So the seriousness of the offence is part of retribution. Surely that is not correct.

Charles Garland: The intention is that those three paragraphs make up the retribution and deterrence package.

Jeremy Purvis: Are you saying that deterring criminals is the same as exacting retribution?

Charles Garland: I would not say that they are necessarily the same thing.

Jeremy Purvis: Where in section 6(4) are they separated?

Charles Garland: I simply aimed to make the point that the factors that are mentioned in section 6(4) constitute the main elements of retribution and deterrence. It is not stated which factors relate to retribution and which relate to deterrence.

Jeremy Purvis: The same appears to be true of the way in which the bill deals with retribution in relation to life sentences, which have different characteristics. When the punishment part of a life sentence is set, will retribution be defined in the same way as it is for non-life sentences?

Charles Garland: The terminology for life sentences is slightly different, in that retribution and deterrence are labelled as the punishment part of the sentence. The punishment part must satisfy the requirements for retribution and deterrence, leaving aside any requirements for the protection of the public. To some extent, for life sentences retribution and deterrence essentially constitute punishment.

Jeremy Purvis: Are you talking about deterring the public or deterring the individual concerned from reoffending?

Charles Garland: Both are covered.

Jeremy Purvis: Where in section 6(4) is that stated?

Charles Garland: There is no explicit mention of that. The court must consider—

Jeremy Purvis: So it is not necessarily the case that both interpretations are covered.

Charles Garland: The courts will interpret the provision as they see fit. On occasion, they will pass a sentence with a view to deterring other people from committing the crime and in some cases—

Jeremy Purvis: That is precisely what the sheriffs said in their evidence to us—they said that they consider matters on a case-by-case basis. They may decide that the purpose of a sentence is to prevent the person from reoffending or that it is to provide a signal to the community. However, although section 6(2) makes it clear that the custody part is

"an appropriate period to satisfy the requirements for retribution and deterrence",

there is no definition of whether the aim of deterrence applies to the individual or to the community. In addition, the definition of retribution for life prisoners seems to be different from that for other prisoners. Can you appreciate the confusion that exists?

Charles Garland: We can have a look at that. The punishment part of lifers' sentences is intended to be comparable to the custody part of custody and community prisoners' sentences in that both must

"satisfy the requirements for retribution and deterrence."

I note from some of the evidence that has been presented that the constituent elements may not clearly be read as being those that are set out in section 6(4).

Jeremy Purvis: We will have a look at your review of that section.

Johann Lamont: I would be happy to dig into the matter further. Rather than sit back until stage 2 to find out whether we complete a review, you may wish to have an active dialogue about the concerns. It sounds as if they are technical, but they may not be. I think I know instinctively what retribution, punishment and deterrence are, but I might be entirely wrong about that. We can discuss the matter further.

The Convener: It would be helpful to have clarity on that point at the earliest possible convenience.

The sheriffs stated in their evidence that they do not feel able to tell offenders—or, indeed, victims—what the final sentence served will be, because of the roles of the Government and the Parole Board.

Jackie Baillie: The convener is in danger of straying into my question.

Minister, I press you on your response to the convener's first question. We all want clarity about sentencing and release, because that will increase public confidence in the system. As the convener said, the only public announcement of the sentence will be made in court, but the actual period to be spent in prison will not be stated at that time, because ministers can reduce or increase it. The conditions that will be applied to the community licence will not be stated, because ministers and the Parole Board will decide them, and neither will what will happen in case of breach be stated, because in those circumstances ministers and the Parole Board will decide what is in the public interest. How will victims and the public know what will actually happen to the offender? The courts will have one opportunity to say in public what the sentence will be, but there are all those caveats.

Johann Lamont: There are two separate issues: there is the stage at which the sentence is announced and there is the process by which it can be shifted. There is a separate discussion about the extent to which the general public should be engaged and involved in the movement of individual sentences and how that is dealt with.

We know with some certainty that the minimum amount of time that the offender can expect to

spend in custody will be stated at the first stage. That is significant, because at present one thing is said but something entirely different happens. My understanding is that, at the next stage, if it is agreed to extend the community licence because of the considerations of the Parole Board, that will not be made public.

There is a distinction between the general public and victims. There is also a discussion about what information victims want and the degree to which they want to be engaged in the detail of somebody's sentence. However, there will be clarity about the minimum time to be spent in custody and the process by which there will be any changes. People should have confidence that what happens to the offender will not be determined by factors that are extraneous to the offender and the threat that they pose to the community. There is a process—when they go from the custody part into the community part, there will be a risk assessment and licence conditions. People need to know that if there are breaches, there will be consequences—if they do X, Y will follow.

There is a distinction between the statement that will be made in court and the process by which there will be a shift in the sentence, but there will be no shift in the minimum period in custody, which will be stated clearly at the initial stage.

Jackie Baillie: I understand the process that you have outlined, which is helpful. I will explore the minimum period of custody later, but what will happen to home detention curfew? Ministers will be able to reduce the custody period, so the minimum period could be reduced by ministers at a later stage.

Johann Lamont: I think that all members of the committee understand the positive role that home detention curfew can play—and has played—for low-risk offenders. We want to consider that in the new process, but we are clear that we will not commence home detention curfew in the custody part until we are confident that the system has bedded in, so that will be done at a later stage. The power will be available, but it will not be used until the system has bedded in.

A statement will be made about the custody part, and home detention curfew will not be available to people who are sentenced under the regime in the bill. We might wish to consider making it available in the future—that is logical, given the conversations and evidence about short sentences of less than six months—but ministers do not intend to exercise the option for people who are sentenced under the regime in the bill.

Jackie Baillie: Then why do we have the option at all, given the desire for clarity, transparency and confidence in the system?

15:45

Johann Lamont: To have confidence in the system you must have confidence that it works. There is some evidence—others here know more about it than I do—that home detention curfew works for certain offenders. However, in order to give people confidence, we are committing to not exercise that provision until the process is bedded in. Whole areas of the bill require people to have confidence. People can sign up to the notion that a sentence should reflect the need to punish, to deter and to rehabilitate—we all accept that—but if any part of that is seen as meaningless or weak, people will lose confidence in the system as a whole.

The new provisions reflect quite a significant change. At the earliest stages, we do not want the explicit clarity about the custody part and the community part of the sentence to be clouded by the notion that the home detention curfew could be introduced at the same time. We can see its strength as an option, but we want to ensure that the new provisions are bedded in before that happens.

Jeremy Purvis: Given that it will be the law that home detention curfew is an option, could not a prisoner ask for it? Perhaps Mr Cameron could comment on that. The proposal will end a procedure that is already under way: we heard from the previous panel that there have been 126 home detention releases. Will that now be halted?

Tony Cameron (Scottish Prison Service): There have been 700.

Jeremy Purvis: We heard that there had been 126 from Barlinnie. Is the total 700 across the whole estate?

Tony Cameron: There are 308 people on home detention curfew at the moment.

Jeremy Purvis: Given that every prisoner will have a custody and community part for sentences of more than 15 days, does that mean that there will now be an end to that process?

Tony Cameron: Eventually, because a new system of a custody part and a discretionary part will supersede the current automaticity that attends sentences of less than four years.

Jeremy Purvis: Then I wonder whether it would be better just to take chapter 4 out of the bill, because that would make matters quite clear. I shall return to that issue.

I turn to section 6 again, to the delight of Mr Garland. The factors to be taken into consideration when setting the headline sentence and the custody part can effectively be taken into consideration twice, when setting the headline sentence—for the seriousness of the offence—

and when setting the custody part. If matters to do with the seriousness of the offence have to be taken into account under section 6(4), why cannot the headline sentence be longer, instead of the custody part of a shorter headline sentence being longer?

Charles Garland: As has been made clear, the intention of the bill is to alter nothing to do with the setting of the overall, or headline, sentence. That will continue as at present, and there are well-established appeal procedures for sentences that are either too lenient or too stiff. As regards overall sentencing, it is expected that that will carry on. What is being introduced is the requirement to set a custody part for all determinate sentences of more than 15 days. As you point out, all the factors that we identify in section 6(4) as being relevant to the length of the custody part will also contribute to the length of the overall sentence. To put it simply, the intention has been to try to leave the overall sentence as it is at the moment, but to strip out any elements of that sentence that the sentencer may have in mind for the purposes of protecting the public, and then to take whatever is left—provided that it is between 50 and 75 per cent of the overall sentence—as the custody part.

Jeremy Purvis: If the offence has the same characteristics as those set out in section 6(4), with regard to the seriousness of the offence and so on, why have a 75 per cent limit? If the headline sentence and the custody sentence determinants are the same, and both satisfy the requirements for retribution and deterrence, why have that 75 per cent limit?

Charles Garland: The assumption is that some element of every custody and community sentence will be served in the community. The custody limit has been set at 75 per cent. However, it is also recognised that it is likely that some of a sentence will be referable to the need to protect the public. The bill aims to get the sentencer to strip that out in deciding what the appropriate custody part will be.

Jeremy Purvis: If the Scottish ministers decide that the public are at risk, and therefore ask the Parole Board to refuse someone's release into the community after the custody part, why will that person not serve the whole sentence in prison?

Charles Garland: Shortly before expiry of the custody part, ministers will have the power to refer the matter to the Parole Board, which will be obliged to direct release or to refuse to direct release, provided that three quarters of the sentence have not been served. As I said, after three quarters of the sentence have been served, the intention is that the offender will proceed automatically to serve a period—the minimum is 25 per cent of the sentence—on licence in the community, subject to recall to custody should that be deemed appropriate.

Jeremy Purvis: That would mean recall for the remainder of the sentence.

Charles Garland: Indeed.

Jeremy Purvis: The minister said at the beginning and the policy memorandum clearly states that one policy intention is to reduce reoffending. However, section 6(5) debars sentencers from considering the risk of reoffending in setting the custody part. Does the bill really intend to remove sentencers' consideration of public protection as a significant factor in determining the period in custody?

Johann Lamont: That factor determines what happens at the end of the custody part.

Valerie Macniven: A major objective of the policy is to have real-time consideration of the risk to the public and not a decision that is based on the ticking of the clock. We have discussed separating the two elements. A minimum custody part will be set. I will not say that the punishment part is an equivalent, but the custody part has that effect and it is not to protect the public, except to the extent that if someone is in prison they are clearly not in direct contact with the public.

The aim is to allow real-time factors to be taken into account in deciding about release. Time in custody provides the opportunity to build a further sense of the risk that a person poses to the public, according to factors such as their behaviour in prison and their acknowledgement of their previous offence—factors that are already relevant to other decision making when the period is not determined, as in lifer cases.

Jeremy Purvis: Why cannot the sheriff make the decision? Why should the Prison Service do it? When the Prison Service does it, it is not on the public record or transparent. That follows from Jackie Baillie's questions. A sheriff could state clearly that part of the custody part is to protect the public, but the bill debars them from considering protection of the public.

Valerie Macniven: I can say only what I have said already. In ministers' view, the opportunity to consider the public risk in real time is a significant advance on the current arrangements, under which the ticking of the clock determines when the public reconnect with a prisoner.

Jeremy Purvis: Surely the elements are not mutually exclusive. A sheriff could take into account public protection when determining the custody part. If a person's behaviour in custody is not appropriate, the Prison Service will be able to refer them to the Parole Board.

The Convener: I will bring in Mr Cameron, who wants to comment.

Tony Cameron: I want to correct something that Jeremy Purvis said about who will refer a prisoner to the Parole Board. It has not been decided that the SPS will do any such thing; the Scottish ministers will do it. The SPS does not currently make such determinations and the bill does not provide for us to do so. The issue has yet to be considered, and no one should jump to the conclusion that the SPS will make the decision.

Jeremy Purvis: Who does the Executive intend to make the decision, if not the SPS? What other options are there?

Johann Lamont: I suspect that I should take advice and come back to the committee on that.

Maureen Macmillan: How will the Scottish ministers determine the conditions of community licences in cases in which the Parole Board has not been involved? The bill does not specify what the standard community licence conditions will be. What conditions do you envisage will be typical and what additional conditions might be added in particular cases? Will there always be a condition that requires the person to be of good behaviour and to keep the peace?

Johann Lamont: We are keen that licence conditions should reflect decisions that are made after the individual who is to serve the community part of their sentence has been assessed. If the sentence is less than six months, we would expect relatively straightforward conditions, such as you described, but in some circumstances further conditions might need to be attached. In other cases, I would expect stricter conditions, which would reflect the assessment of the individual, as I said.

Valerie Macniven: There is likely to be a similarity between the minimum community licence conditions and the current standard conditions of licence that are set out, which apply when people who are serving longer sentences go before the Parole Board for a determination of release—the current processes are quite similar to the process envisaged in the bill. As the minister said, there will be a build-up of conditions from that minimum. That relates to the point about real-time assessment of circumstances.

Maureen Macmillan: Where are the conditions set out? Nothing in the bill tells us what the standard conditions will be.

Valerie Macniven: Community licence conditions are not set out in the bill. I was referring to the current standard conditions in the parole system.

Maureen Macmillan: Will the standard community licence conditions be the same as the current standard conditions?

Valerie Macniven: The area can be developed, but the basic concept is that minimum conditions on good order and good behaviour will be the starting point, after which consideration will be given to the offender's circumstances and public protection, which is crucial.

Maureen Macmillan: The committee thinks that there has been some vagueness about community licence conditions. We are not terribly sure what the standard conditions will be and how they will be added to, depending on the seriousness of the offence.

What would happen if an offender breached the conditions or was considered likely to do so? I am thinking in particular about offenders at the lower end of the scale. It seems from section 31(1) that an offender could be recalled to prison for quite a minor breach. The prison governors from whom we heard suggested that an offender who did not turn up for an appointment might be recalled to prison, if attendance was a condition of their licence. However, section 33(3) provides that the Parole Board must order re-release unless there is a risk of

"serious harm to members of the public."

A person who was serving a short sentence probably would not present a risk of serious harm to the public. They might get out of prison on licence but do something fairly minor that breached the licence conditions and be recalled to prison. They would then be let out again—and perhaps recalled again. The approach would create an odd situation in which people popped in and out of prison.

16:00

Johann Lamont: I will be happy to consider the matter further. When I first considered the evidence I was struck by the suggestion that, perversely, we might be creating a revolving door. However, I do not think that we have done that.

It must be clear that the licence conditions are there for a purpose and cannot be ignored, but at the same time there must be a sense that the response is proportionate. As you will know from your schooldays, there is a difference between wilful disregard and forgetting a jotter. I do not mean to trivialise the breach of conditions, but there is a difference between an unfortunate breach of a condition in certain circumstances and an emerging pattern of behaviour. We must ensure that people take the conditions seriously. There will be a hierarchy of responses. There might be a warning or further discussion with the

person who has breached the conditions. Scottish ministers will be responsible for recalling an offender, so it is reasonable for them to acknowledge that that is a significant step.

We recognise that a different body must judge whether the person should be re-released. That is a different test. If we want people to have confidence in the community part of the sentence, the conditions that are attached must be seen as part of a contract that people must live up to rather than ignore. However, there is a tension between addressing that concern and having a flexible response to breaches.

We do not want there to be perverse consequences, nor do we want anything to undermine the system, so it is necessary to seek clarity about the consequences of breach of conditions. I recognise the significance of the points that have been raised.

Valerie Macniven: I will draw some parallels with the current arrangements for community-based sentences. Similar points apply when someone is on a probation order and is under the supervision of a community justice social worker. National standards on how community sentences operate are kept under review. The underlying intention is to have a proportionate response. Parts of the regime are relevant to the situation that we envisage, in which we will deal with many more people coming out of custody under supervision than we do now. There is scope for knowledge transfer.

Someone who missed one appointment would be highly unlikely to be immediately recalled. That would not usually satisfy the public interest test, unless there was a pattern of behaviour of complete disregard for the conditions or if there was something exceptionable about the missing of the appointment. We never say never, but it is not the intention that if someone missed one appointment their feet would not touch the ground and they would be off to jail.

Maureen Macmillan: I am content with what you have said. There is a lot of room for further discussion on the criteria for recall and on the Parole Board's role in relation to the possibility of re-release. We look forward to further discussions.

The Convener: Before we move to the next question, can I press the minister to clarify why the standard conditions do not appear in the bill and to indicate whether they are likely to do so? Making clear in the bill the basic conditions, as opposed to variations or conditions related to the assessment of individual cases, is a matter of public confidence.

Johann Lamont: I do not know whether knowledge about the history of the drafting of the bill might help us.

Valerie Macniven: As I said, there are de facto standard conditions, which include one about good behaviour and another about not quitting the country. Those are important and, in the interests of transparency, the suggestion that the standard conditions be imported into the bill could probably be considered further, subject to anything that might be said about the difficulty of doing so.

The Convener: We would be grateful for a note on that.

Bill Butler: I welcome the minister formally to her new position.

The committee realises that many offenders released on licence will be short-term prisoners. To what extent can meaningful risk assessment and management be carried out with that group both in prison and in the community?

Johann Lamont: That will be a challenge. We all recognise that short-term sentences reflect a different level of offending and presumably, therefore, a different level of risk. The work that is done with such offenders should be proportionate and will not be the same as the work done with people who are in prison for a great deal longer.

If I thought that work with offenders could take place only in prison, I suppose that I might have more anxieties about that. However, because sentences will have a custody part and a community part and because we recognise the significance of licence conditions in trying to get offenders to engage with those who can help them, I believe that there will be space to work with offenders throughout the sentence rather than just within the custody part. The approach in the bill recognises that work can be done with offenders at the level that is required for them throughout the two parts of the sentence.

Bill Butler: I take that on board and I understand that. In practical, day-to-day terms how will the proposals in the bill contribute to the assessment and management of offenders throughout both the custody and community parts of the sentence?

Johann Lamont: We seek to clarify that risk assessment should be done during the custody process rather than when the offender reaches the halfway point, when a decision must be made. An integral part of the work during the custody part will be to prepare the person for the community part. That important work will be at the heart of the sentence. In practical terms, the bill sets out how people should work their way through the system rather than setting out a process that is driven simply by time. I hope that I am making sense.

As I think I mentioned earlier, for very short-term sentences, we need not just a formal determination of how the person should be

supervised but to have in place services such as health and housing that are responsible for reaching out to folk who come out of prison. Those services need to be much more geared up to picking up on people who are in need.

Bill Butler: For very short-term prisoners, I recall that one of our witnesses last week suggested that it is inappropriate to use terms such as "assessment and management". We were told that only the most basic screening can be carried out of such prisoners. How would the minister respond to that?

Tony Cameron: That is the case for very short-term prisoners. Given that 98 per cent of prisoners arriving at Cornton Vale and about two thirds to three quarters of male prisoners test positive for illegal drugs in their systems—the figures for the men vary according to whether the sentence is short or long term—medical issues are paramount in the first short period of a sentence. If the person is in prison for only 21 days, that gives us no time. As members heard me say when the issue arose during my previous appearance at the joint meeting of the justice committees on 31 October, given current resources and a prison's knowledge of the prisoner who comes in, the amount that a prison can do with people on short-term sentences is extremely limited. At the moment, we have no system of integrated case management for offenders who have been sentenced to less than four years, because we have concentrated on the most difficult and dangerous, or problematic, prisoners. For the vast majority of prisoners on very short-term sentences, there is a limit to what any prison system can do. It is not a social service.

Bill Butler: I did not have the pleasure of hearing you on 31 October, as I was elsewhere. I apologise for that, Mr Cameron.

Mr Cameron has replied to my question, but I would rather hear the minister's reply. Is not the use of terminology such as "assessment and management" inappropriate, given that only the most basic screening can be carried out for very short-term prisoners? I know that Mr Cameron alluded to that. Does the minister agree?

Johann Lamont: I could not be certain about the distinction that is being drawn in the language that you have used, so I would not concur with you on that. However, I recognise the obvious fact that, if someone is on a very short-term sentence, the capacity to understand the complexities of that person during the custody part will be less than if the person was due to be in prison for a longer period.

We are considering how we deal with people once the court has determined what the custody part should be and what the community part should be. We have to acknowledge that if somebody is given a shorter sentence, not all their needs can be delivered through the Prison Service. Therefore, we must ensure that they are not abandoned when they serve the community part of their sentence and that the mainstream services are there to meet the specific needs that have been identified in prison. I can be corrected if I am wrong, but perhaps some of the conditions could direct people to co-operate with agencies that might help to address their needs. I am pretty sure that the sentence that is imposed for an offence will be a reasonable reflection of the needs that have been assessed.

Valerie Macniven: I want to add three points to that. First, the advice that was available to ministers when they formulated the policy was that a period of 15 days in the community—which you might think would be the balance in many cases in which there was a 50:50 split—was the minimum amount of time in which we could begin to engage practically with a person. Anything less than 15 days would be too short a time to engage, although we would still be able to signpost people in some direction. In 15 days we could begin to help people to reduce the risk of their reoffending through practical measures.

Secondly, you might have picked up the term "integrated case management", which Mr Cameron said is currently applied to prisoners on longer sentences. The financial memorandum gives a sense of the preparatory work that needs to be done to put in place the new measures. We have been thinking about how the integrated case management approach would apply to a much larger number of prisoners. From the moment a prisoner arrives in custody, we are thinking about the time when they will go back into the community. We are planning how to integrate case management in custody and in the community.

Finally, the context for the bill is implementation of the Management of Offenders etc (Scotland) Act 2005 and the setting up of community justice authorities, which are intended to join up the process of managing offenders in the prison and the community on a grand scale.

Jeremy Purvis: Paragraph 163 of the explanatory notes to the bill, which develops the point about the minimum time needed for supervision to be effective, states:

> "social work practice experience suggests that a minimum supervision period of 3 months in the community is essential."

However, as far as I understand it, section 27 provides that supervision conditions will apply only to those who have a custody or community sentence of six months or more, which means that 80 per cent of the prison population will not have conditions set on their release on licence into the

community. Do you want to reconsider that, or am I misinterpreting the bill?

Valerie Macniven: A great deal might turn on the term "supervision", which has a distinct meaning in the section to which you referred. I have been talking about helping people integrate back into the community. A range of measures are available for that, from helping people to access joined-up services to providing supervision by a fully qualified community justice social worker and addressing people's offending behaviour in a much more intensive way.

The explanatory notes acknowledge that the original sentence has to correspond with the severity of the offence and that the supervision that is applied in real time takes account of the particular circumstances and the risk. It is more of an intensive package.

16:15

Jeremy Purvis: That has not answered my question. Where in the bill does it state that anyone who is sentenced to under six months can have legal conditions set for them other than the basic licence conditions when they serve the community part of the sentence?

The only place in the bill that might allow that to happen is in section 11, I think. If the SPS—or whoever it might be—recommends to the Parole Board that the offender is not to be released after the end of the custody part, the Parole Board can overturn that recommendation, because it has the statutory power to apply conditions to the offender. The section goes on to explain what those conditions can be. However, there is no statutory power to apply conditions to the licence of someone who serves less than six months, which means 80 per cent of the prison population.

Valerie Macniven: I was answering your question in terms of the support for offenders rather than the statutory conditions.

Jeremy Purvis: Yes, but those conditions do not exist for offenders who serve less than six months.

Valerie Macniven: A distinction is made between the two periods.

The Convener: When you review the *Official Report* of today's meeting, it would be helpful if you would drop us a note to clarify that point.

Colin Fox: You will appreciate that much of the evidence on the bill that we have heard so far has placed central importance on effective and accurate risk assessment. That is the line of inquiry that we are following today—how to accurately assess the risk to the public and the problem of reoffending and how to address public confidence.

In evidence last week we heard that risk assessment is an inexact science and that it is difficult to predict confidently whether someone will reoffend. Perhaps this question is directed more at Mr Cameron, who is at the service delivery end, so to speak. The bill requires assessment for all offenders who serve more than 15 days. Will you give the committee a flavour of the risk assessment process that takes place in prison and what staff look for to allow them to make an accurate and effective assessment of where an offender should go next? So much depends on that.

Tony Cameron: As the law stands, we do not make such assessments. Halfway through the sentence, the offender is released, not on licence but unconditionally. We do not make assessments of the risk of harm or apply any other test at that point. The law is clear at the moment, but the bill proposes to change it. Therefore, we have no basis on which to be sure about how such assessments will be made. We are in uncharted waters.

The current system involves the Executive only when prisoners serve sentences of more than four years or life sentences. There is a well-tried system for assessing whether such prisoners who have reached the statutory stage—whether that is after the punishment part or otherwise—remain a risk to the public, although I will not go into that in detail. The Parole Board takes a decision about such prisoners and the Scottish ministers are required to implement that decision. Ministers have no discretion whatsoever, although they and not the Scottish Prison Service are party to decisions about what representations to make to the Parole Board, currently through the Scottish Executive Justice Department.

Colin Fox: Guide us, if you will, towards what you believe SPS staff will do following implementation of the bill. What will SPS staff look for in order to assess the relative risk that a prisoner poses when they have to make a judgment about whether to release a prisoner after they have served either 50 per cent or 75 per cent of their custodial sentence?

Tony Cameron: As I pointed out, it has not been decided that SPS staff will make such decisions. Scottish ministers will make them. It has simply not been decided that SPS staff, governors or I will make them.

Colin Fox: Okay. Let us leave aside what uniform people wear and whether they are ministers or—

Tony Cameron: I do not know the answer to your question.

Colin Fox: Given your experience in the Prison Service, surely you have an idea of how you assess the risk that a prisoner presents and the likelihood of their reoffending when they are released.

Tony Cameron: No. Legally, we are not required to make such judgments at the moment.

Colin Fox: At what stage does the SPS suggest the referral of an offender to the Parole Board, in relation to whether they are likely to be considered a greater or lesser risk, for the Parole Board to consider what licence terms or what release would be—

Tony Cameron: We do not have that function. We give an opinion about a person's behaviour in prison, but we make no judgment about the likelihood of their reoffending.

Colin Fox: What opinion do you give the Parole Board in relation to the offender's circumstances in prison to allow the board to make its own assessment?

Tony Cameron: Various assessments are done by staff, particularly the psychologists whom we employ, who give a professional opinion on how dangerous the person is. That applies to prisoners who are serving life sentences and to certain other categories of prisoners such as serious sex offenders. However, the number of people in respect of whom those judgments are made is very small.

I cannot tell you what judgment will be made about whether to refer people who are in prison for six months to the Parole Board or recommend their release, because the SPS has not been involved in that. However, we have said that our integrated case management system could be extended to inform those who will make such decisions. The system was built for another purpose, but it could be extended to include information about people's offending history, behaviour in prison and so on, and that information could be made available to those who will make the decisions. That is part of our involvement in the risk assessment process, which is costed in the financial memorandum.

Colin Fox: I turn to the role that the SPS will play in preparing offenders for the community part of their sentences. At present, offenders who serve long sentences with the SPS are prepared quite intensively for their release and efforts are made to consider their housing and support services. As I understand it, that is done for prisoners who have been with the SPS for a long time, but there is not the same level of intervention in planning for the release of short-term prisoners. Do you expect that to continue? Will planned intervention continue to be directed at those who serve long sentences?

Tony Cameron: It is a matter of degree. It is still our view that we should spend more time and energy on serious and violent offenders. That is expensive, but the work needs to be concentrated on prisoners who serve long sentences. However, as Valerie Macniven said, the Management of Offenders etc (Scotland) Act 2005 introduced community justice authorities—we are not part of those, but we are a partner to them—in an attempt to ensure that all prisoners are more integrated, except those who serve extremely short sentences. It was intended that work on people's employability, housing, benefits, drug addiction and so on should start before they get to prison.

Very few people come to prison without being known to "the authorities" beforehand. That work should be continued seamlessly during their incarceration and they should be handed on sensibly to those who will supervise them in the community or—where there is no formal statutory supervision—the voluntary, local authority and other bodies that can help them. Resources have been put into that.

Integrated case management is part of the offender's journey and it is supposed to help. We are engaged in trying to improve what, in some cases, we might call the throughcare of people who become serious offenders—I am not talking about people who have received fines but those who are likely to get or have got custody—so that they do not fall between the steps or slip through the grid at any point but are handed on sensibly. We are putting a lot of effort into that by working with the new chief officers of the eight community justice authorities to improve that service to the public. The committee will hear later from them about the planning for that.

Colin Fox: Indeed we will.

What can the Prison Service do that it is not doing just now to prepare better the majority of offenders who are serving shorter sentences for release to serve the community part of their sentences?

Tony Cameron: Irrespective of the bill, we have for some time been improving our service—we hope to continue to improve it—to all the prisoners who are sent to us in order that we can make them slightly better when they leave than they were when they came to us. That includes improvements in the health care that we give. Prisoners are not eligible for the national health service, so we try to ensure that our health care is as good as, if not better than, what they would get in the community.

Through the throughcare arrangements in our link centres, for example, we hope to enable even short-term prisoners to sign some of the forms that they need to sign before they get out. If someone

is not quite sure what to do, the folk who know how to fill in the forms come into the prison and help them with that before they are released. We hope to develop that.

All that is predicated partly on our ensuring that our estate and buildings are fit. It is also highly dependent on the degree of overcrowding that we have to cope with. The higher the numbers, the more difficult it is. We currently have 7,500 prisoners, if we include those who are on home detention curfew, but we have only 6,400 places. You do not need to be Einstein to see that the first figure does not fit into the second very easily. We cannot do anything about that, but our interventions have, even with short-term prisoners, been making progress in terms of decency for some years. We hope to continue that, but we do not have a new magic wand to wave over very short-term prisoners that will make them good. Many of them come to us in a pretty poor state—we try to patch them up. The longer they stay with us, the more we can do and the more we aim to do, but I would be kidding the committee if I said that we could do much more with very short-term prisoners than we are already doing.

However, we can join up with our community justice partners elsewhere much more effectively than we have done in the past.

Colin Fox: I appreciate that—

The Convener: Before we go on, members should ask brief questions and the witnesses should give brief answers. Our time with the minister is limited and we have to deal with other sections of the bill. Make your last question short, Mr Fox.

Colin Fox: I was simply going to say that the throughcare and work with the community justice authorities is clearly something that the Prison Service is doing now and will do whether or not the bill is passed.

Tony Cameron: It is true; we can do more.

Johann Lamont: I have a point to make about risk management. It is important to understand that risk management is a challenge—we are not in the business of misrepresenting something as an exact science when it is clearly not. The Risk Management Authority is on the custodial sentence planning group that is considering with a range of partners how the bill will be implemented. There are too many bodies for me to rattle out just now, but they include the Convention of Scottish Local Authorities, social work, the Association of Chief Police Officers in Scotland, and the Scottish Prison Service. There is an appreciation of the need to work closely with the people who really know about risk management so that we neither misrepresent it nor allow it to be a block to the things that we are doing. We will want to explore that further.

I also want to flag up release and post-custody management of offenders. Paragraph 58 of the policy memorandum deals with who would be responsible. We would expect the SPS and the Scottish Executive Justice Department to act under delegated authority. We still take the view that

"these arrangements are the most practical, effective and efficient way of delivering these aspects of the new policy. There remains scope for fine tuning of how the Scottish Ministers' functions are split between SPS and the Justice Department, but these do not affect the terms of the Bill and accompanying documents."

Again, I would be happy to dig further into that.

16:30

Michael Matheson: In evidence to the committee, two specific concerns relating to structure and process have been expressed about the Parole Board. First, the proposal to reduce the Parole Board to two members in a tribunal might result in less breadth of experience on the tribunal. Secondly, the bill requires that a tribunal decision to release a prisoner must be unanimous. It has been suggested that that could be challenged under the European convention on human rights, largely on the basis that the requirement for unanimity is at odds with tribunal members reaching independent and impartial decisions. How do you respond to those two concerns?

Johann Lamont: I will deal first with the second concern. My understanding is that our advice is that the bill is ECHR compliant and that to require a unanimous decision would not conflict with ECHR.

On the size of a tribunal, we are keen that the system be as efficient as possible and that we harness as much expertise as possible. The proposal to reduce the number of tribunal members from three to two is not in the bill—that is a matter for the Parole Board's rules. When the new rules are drafted, the board will be fully involved in the discussions. That will provide an opportunity to explore further the concern that in seeking to achieve efficiency by reducing the number of tribunal members from three to two, we would get rid of expertise. I am not sure whether that is the case. We are keen to work closely with the Parole Board, which has a crucial role to play. We must ensure that it is able to carry out its functions and use its expertise in a vital part of the process. We would be happy to continue that dialogue with the board.

Valerie Macniven: I have a supplementary point to make. At present, one member of a tribunal must be legally qualified. When the number of

tribunal members is reduced to two, that will remain the case, so there will still be legal expertise on tribunals.

Michael Matheson: Is it fair to say that you would still be open to the possibility of tribunals continuing to have three members, if the Parole Board was keen on that? That said, I am conscious that the bill will have resource implications for the board. If tribunals were to continue to have three members, consideration would have to be given to whether the number of people on the Parole Board overall would have to be increased.

Johann Lamont: I have not been involved in the argument from the beginning and I am always open to persuasion. However, cost is an issue, given the work that the Parole Board will do under the bill. If we want to achieve greater efficiency without losing any of the board's expertise and competencies, we must acknowledge the logic of tribunals having two members rather than three. We must continue to discuss that proposal.

As I said, the size of tribunals will not be set by the bill. I am more than happy to continue a dialogue to establish whether what is being claimed would happen if the number of tribunal members were reduced from three to two would actually happen. We must consider whether a reduction in the number of tribunal members would liberate resources that would enable the Parole Board to do other things that we want it to do. We must strike a balance in the judgment that we make. The board and other experts in the field have crucial roles to play in making cases on which we can come to conclusions.

Jackie Baillie: I want to pursue that slightly further. It is acknowledged that the Parole Board's resources will be stretched, not least because it will have to deal with short-term prisoners and those on recall, as well as long-term prisoners. Have you costed the additional impact and, if so, what is that cost? Can you give us an estimate of the number of oral hearings that the board is likely to have to oversee?

Johann Lamont: I will deal with the generalities—the convener asked me to give short answers, which is always helpful—and I will ask my officials to give you the detailed costings.

It is recognised that there will be an increased workload for the Parole Board. We acknowledge that it will deal with cases such as it has not dealt with before, but we think it important that it will be engaged in that process. We have made a commitment and we recognise that there is a resource implication that we will want to meet. There is no point in giving people new responsibilities while not giving them the means to fulfil them, given the important part that they will play in the overall processes that are identified in the bill. I ask my officials for assistance with the figures.

Valerie Macniven: In view of the time, it might be useful just to signpost to the committee various parts of the financial memorandum. Paragraph 176 includes a table on recalls, and a significant amount of information is given before that. Paragraph 147 contains figures for assumptions of numbers and explains how the costings have been worked up. There are estimates of the number of recalls and suggestions for the number of those that would need oral hearings, as well as a certain amount of matrix showing X times Y equals Z.

Bill Butler: The Parole Board expressed in its written submission concern about provision of information to it about the offence or offences that have resulted in an individual's being sentenced to imprisonment. Can you clarify whether sentencing sheriffs are to be asked to provide post-sentencing reports in respect of all offenders who receive a sentence of 15 days or more?

Johann Lamont: I want to make two points. First, we recognise that the responsibilities of the Parole Board will change, which will have consequences for any information that it may have. Secondly, as I said, a planning group is considering how such information will be delivered. Valerie Macniven will take you through the detail.

Valerie Macniven: If judges had to make a report in every case, that would be a significant change. However, there is a question about how big a report that would be—some streamlining might be possible. I am pleased to say that we have the benefit of a sheriff assisting with the work of the planning group, which is only just starting—obviously, the matter depends on outcomes here in Parliament. It is a case of assembling the right people so that they can help when the time comes. The questions concern what is right for the system and what is proportionate.

Bill Butler: So, that work is going on. From what you have said, however, I assume that it is unlikely that such reports will be required for people who receive very short sentences.

Valerie Macniven: We would not rule anything out. The answer would depend on what was proportionate in each case. The requirement for a report is not always determined by the length of the sentence, but by what is appropriate.

Bill Butler: The Parole Board has stated that, given the short timescale and if the sentencing sheriffs are forced to provide a post-sentencing report for every case, a sentence may expire before they can consider the case. Have you taken that on board?

Valerie Macniven: I might have to turn to my legal colleague. The bill will not allow such loopholes. If there are any issues around that, we will have to consider whether that should be addressed at a later stage.

Bill Butler: I am obliged, but I hope that we can get a bit more clarification—that response was a wee bit general.

Charles Garland: Some of the timings will be found in the new Parole Board rules, which are yet to be drafted. It is expected that they will be drafted in parallel with the bill. As the committee will be aware, the current Parole Board rules lay down time limits for various—

Bill Butler: When will a draft of the new rules be available to the committee?

Charles Garland: I cannot give an undertaking as to when a draft will be available. However, the Parole Board rules will need to be in operation around the time the bill is implemented.

Bill Butler: I understand that, but I would be grateful if you could say approximately when draft rules will be available for us all to look at.

The Convener: Jackie Baillie has a brief question on licensing.

Jackie Baillie: No—it is fine.

Jeremy Purvis: My question follows on from Bill Butler's questions. Under section 9, if Scottish ministers determine that they want to keep a person in custody for longer than was set by the judge, they must refer the matter to the Parole Board before the end of the custody part of the sentence. However, there is no requirement on the ministers to do that in good time, although it would be unfair on the Parole Board if such matters were to be referred to it a day before the end of custody. The Parole Board is required by section 10 to determine whether section 8(2) applies to the individual before the expiration of the custody part, although it could have only half a day in which to do that.

Charles Garland: That difficulty exists at the moment. Under the current Parole Board rules, various processes need to happen before the Parole Board can determine a matter. For example, the prisoner needs to be sent a copy of the dossier and must be allowed to make representations. There is then a period for consideration by the Parole Board. It is intended that time limits will be put in the new rules, which will make it plain that ministers must initiate the process by making the referral at a suitable point, so that there is enough time for all that to happen.

Johann Lamont: This is an issue about—we always talk about it, but it is genuinely important—working in partnership and not asking other people to do the impossible. The general efficiency of the system depends on people taking responsibility and making decisions at the appropriate time in order for the next stage to kick in. I would like reassurance about that in whatever way the matters are expressed. I presume that the planning group will consider what could reasonably be expected of the various partners at each stage.

Maureen Macmillan: We have heard evidence that the provisions in the bill could increase the prison population by 1,100 or more—some witnesses have suggested that the number could be a lot bigger. You said earlier that the bill deals with sentences as handed down rather than different kinds of sentencing. However, I wonder whether the Executive is considering replacing short custodial sentences with conditional sentences or sentences that are served entirely in the community. Those could perhaps include fast-track recall.

Johann Lamont: I repeat the point that the bill deals with the management of sentences once they have been issued. Good examples of community disposals and so on have already been developed. However, the bill is also about the management of sentences and understanding that there are custody and community parts to them. The notion of community disposals will be given more authority where such disposals are seen to be working effectively. The issue is broader and goes beyond the bill.

We are saying that an understanding of the individual offender is critical to management of sentencing, rather than taking the blanket view that we should do X for certain offences. Sentencing remains a matter for elsewhere, but it is entirely reasonable to approach management of sentencing as we are doing in order to give people confidence. In recognising that there needs to be a balance between punishment and rehabilitation, we are giving more authority to the notion of community disposals elsewhere in the system. Additionally, there are always other things going on around the bill. The bill is just one step along the road—which the committee has been on for longer than I have—towards managing offences, cutting reoffending and deterring people from committing offences in the first place.

Maureen Macmillan: Do you accept that the number of prisoners will increase significantly?

Johann Lamont: The financial memorandum estimates that the number will go up.

Tony Cameron: That information comes from us.

Johann Lamont: Our aim, in the longer term, is not just to manage what is inevitable, but to change behaviour through our action. If we are

effective in providing rehabilitation, in dealing with reoffending and in giving out messages about the consequences of certain offending behaviours, there ought to be a shift in behaviour over time. I am optimistic that there will be such a shift. Nevertheless, the financial memorandum is explicit in saying that we expect there to be extra prisoners as a consequence of the bill.

16:45

The Convener: Michael Matheson will ask the last question on sentences.

Michael Matheson: The committee is conscious that the impending spending review means that the financial situation for some policies is a little bit fluid. To what extent will negotiations be required to secure the funding that is necessary for the bill?

Johann Lamont: Whenever we decide on a policy or a legislative approach, resource consequences accompany it and we must argue for them to be met. As I have said, there is no point in having an aspiration to take a policy approach if we do not have the means to deliver it. I am not saying that that is not challenging—any set of budgets will have competing priorities—but that is part of the process. We have said in the financial memorandum that resource consequences will have to be met.

Michael Matheson: So the overall funding that is required for the bill has still to be secured.

Johann Lamont: The financial memorandum identifies the expected cost, but that must be kept under review.

The Convener: Concern has been expressed in evidence that the bill does not contain a definition that clarifies the difference between domestic and non-domestic knives. Future court cases might provide clarification, but what additional guidance will the Executive provide in advance to assist retailers and trading standards officers in approaching the bill?

Johann Lamont: I acknowledge that the bill does not use the term "non-domestic knife"; it says that a licence will be needed to sell

"knives (other than those designed for domestic use)".

You are right that part of the definition will come from the court process.

A general anxiety is that putting complex definitions in legislation is more likely to produce loopholes than solutions. We are keen to ensure that guidance is given to local authorities that enables trading standards officers to advise retailers. We are keen to work with local authorities to ensure that any guidance on that and other issues is consistent throughout Scotland.

The Convener: I am sure that the minister is aware of evidence that we have received from interest groups other than retailers. Based on that evidence, the committee's plea is that it would help us to have definitions early of all types of knives and equipment that could be classified in that category. Are we likely to see such definitions early?

Valerie Macniven: Several of the details that will clarify some of those points will be included in regulations, which are not yet available to the committee. Below that, local discretion will exist. The arrangements will have two elements. The subordinate legislation that will be produced in due course will leave latitude in some cases to allow local authorities that apply the measures to take into account local circumstances. The regulations have not yet been drafted.

Bill Butler: How will the bill discourage people from buying non-domestic knives when they have no legitimate reason for doing so? For example, is there evidence that a significant number of the current problems arise from retailers that market and sell such knives irresponsibly?

Johann Lamont: A broader issue than the question that the bill tackles is that we must challenge the culture that makes people feel that they need to carry knives, which will make a difference. Members will be aware of the campaign that the Minister for Justice launched on the consequences of knife crime, which I hope will have an impact.

Any retailer that wishes to sell non-domestic knives or swords to the public will have to apply for, and be granted, a licence and will be bound by that licence's conditions. That will concentrate minds. Licence conditions will impose restrictions on display in shop windows or any other part of premises that is visible to the public from the street. That will affect how people are encouraged and how some notion of what it means to carry a knife is fed.

As you know, we have made exceptions to the general ban on the sale of swords, but we are nevertheless introducing a general ban, which will be helpful in itself.

Bill Butler: Do you not think that the problem stems from a significant proportion of—how can I term them—rogue retailers?

Johann Lamont: The licensing scheme, like any licensing scheme, seeks to drive out those retailers who are uncomfortable with any regulation of their business or with trading visibly. Because licensing manages the process, it deals with those who may fall into the category that you have identified.

Colin Fox: We have been considering whether there is a danger that, when we introduce licences, somebody who does not want to buy a knife from a licensed shop would get one on the internet or by mail order and that we would drive the purchase of knives underground. Do you have any concerns in that regard?

Johann Lamont: That could lead to the counsel of despair that we cannot do anything about anything because we cannot do everything about everything. I recognise the problem that you raise—it is obvious in every area of life that we license—but licensing seeks to bring the trade out into the open, challenges legitimate retailers about the way in which they do business, raises the question of why people carry knives and confronts some of the reasons for carrying them. It has been alleged that the trade will be driven underground but, although we offer no absolute guarantees about the way in which knives move around the system, licensing seeks to manage and control a significant part of the trade and therefore adds significantly to our capacity to confront knife crime, even though it does not necessarily deal with it all.

Colin Fox: We are all keen to defeat the knife culture that blights our society, but how would you prevent people from getting knives from abroad, by mail order or from unlicensed traders? Is it even possible to do that? Have you considered whether that is a consequence of introducing a licensing scheme?

Johann Lamont: People will still be held to account for carrying knives without due reason; other parts of the system deal with that. We are trying to deal with both supply and demand—that is, why people want to carry knives in the first place. We will enforce the legislation that says that people ought not to carry knives and that there are grave consequences to carrying and using them. We have already underlined the significance of that offence.

We do not pretend that the bill sorts out knife culture, but part of the problem is that some people seek to make a profit from the unhealthy desire of young men in particular to carry knives and, unfortunately, use them on their peers. The bill is part of the solution, but not all of it.

Valerie Macniven: Colin Fox has mentioned the use of the internet a couple of times. There is clearly a difference between organisations that are based in Scotland and those that are based in other countries, but businesses that sell over the internet will be caught by the bill if they are based in Scotland.

Jackie Baillie: The bill allows the Scottish ministers to set minimum conditions for any knife dealer's licence, with individual local authorities being able to impose additional licence conditions. Some witnesses have argued that local variations will make it more difficult and costly for retailers to comply. Is there a case for having standard conditions throughout Scotland?

Johann Lamont: Now we are revisiting issues that were discussed in connection with the Planning etc (Scotland) Bill: the tension between the central authority and local flexibility and the question of where it is sensible for decisions to be taken. My instinct is that the Scottish Executive and the local authorities are at one on the need for a licensing scheme. It is possible to clarify reasonable standard conditions that should apply while recognising that it is also reasonable for local authorities to have flexibility because the knife culture is expressed differently in different parts of the country and knives that are used for legitimate purposes in some places are not used in the same way throughout Scotland. It is very much about partnership, not about confusing people—why would we want to confuse those who are seeking a licence? However, we recognise that there are specific issues in different parts of the country and that, as local authorities have said, those differences require specific conditions.

Maureen Macmillan: I would like to ask about swords. The policy memorandum sets out some examples of what the Executive considers to be the legitimate use of swords, but some of the people who have submitted evidence to the committee have expressed concern that the planned secondary legislation will not recognise their particular use of swords as legitimate. For example, it would not allow the collection of modern high-quality reproduction swords. Will there be any further consultation on that area?

Johann Lamont: We have already acknowledged that there is a need for exceptions in certain circumstances and that there are people who have a legitimate use for swords. Of course, that must be tested against the consequences of swords being available in a local community in entirely illegitimate ways, which is the huge challenge that nobody gainsays. We will consult further on secondary legislation. We do not wish the legislation unnecessarily to capture people who have an entirely legitimate purpose in using swords. People should be reassured on that point.

The Convener: I am aware that you have to leave us, minister, but I wonder whether I can prevail upon Mr Cameron to stay for a couple of seconds to answer a specific question.

Tony Cameron: As long as it is just a couple of seconds.

The Convener: We appreciate that you have time difficulties as well.

Thank you, minister, for taking time to come here this afternoon.

Johann Lamont: Thank you very much. As I said at the beginning, I am more than happy to ensure that you have sufficient information in front of you to draw up your report as timeously as possible following today's meeting.

The Convener: Thank you, minister.

Jackie Baillie has a specific point to raise with Mr Cameron.

Jackie Baillie: It is less a question than a comment, but I would prefer Mr Cameron to be here to hear what I have to say.

I regard the letter that Mr Cameron sent to the convener as particularly unfortunate, as it is clear that the context in which we took evidence today was guided by it. The evidence given was less than forthcoming and it is my view that the very experienced witnesses were placed in a most unfortunate position—almost in a straitjacket. In relation to another bill with fewer implications for the Scottish Prison Service, prison governors could comment on issues that affected operational matters, but today we are expected to believe that the same prison governors are passive recipients of knowledge.

I do not want to take up Mr Cameron's time or the committee's, but I suggest that we provide him with a copy of the *Official Report*, so that he understands the dissatisfaction of the committee members, when we write to him, as we agreed to do earlier. I look forward to his response.

The Convener: Mr Cameron, I am obliged to give you an opportunity to comment at this time, if you wish to do so.

Tony Cameron: If the committee chooses to ask the wrong people on my staff, it gets what it has got. I am unmoved.

The Convener: Thank you.

I now ask our final panel, which was to have been the penultimate panel, to join us. I welcome Mark Hodgkinson, chief officer of the northern community justice authority, and Chris Hawkes, chief officer of the Lothian and Borders community justice authority. I thank them for their forbearance this afternoon. We are extremely grateful to them for being so accommodating in view of the minister's difficult circumstances. I appreciate that Kirriemuir is a fair way away—although it is nearer to the Parliament than where I live.

Under the Management of Offenders etc (Scotland) Act 2005, you now hold key responsibilities and face significant challenges in relation to the management of offenders. What progress have you made in setting up the structures and systems through which you intend to meet them? What do you think are the key challenges that you will face?

17:00

Mark Hodgkinson (Northern Community Justice Authority): The chief officers have been in post for between four months and—in Mr Hawkes's case—a matter of days. Nevertheless, we have all now presented to the Executive draft plans to reduce reoffending in our local areas and to operationalise some of the broader aspirations in the 2005 act. In doing that, we have had a considerable amount of support. Parts of my plan were written by both the Northern constabulary and Grampian police. Also, we were helped with a significant part of it by the Scottish Prison Service liaison officer who is attached to the northern community justice authority.

Because of the timescales in which the plans were written, they are concerned largely with setting in place the building blocks from which actions can be taken to join services up, manage offenders more efficiently, effectively and co-operatively and reduce reoffending.

It is early days yet, but we have made a good start. There has been a tremendous amount of enthusiasm and commitment from all the partner agencies that have been involved so far.

Chris Hawkes (Lothian and Borders Community Justice Authority): In my area, the most significant development has been the creation of the community justice authority. It has five political members and a convener and it has a public meeting every two months. Those meetings are attended by a broad range of agencies that are involved in dealing with offenders. Also, in that relatively short period of time, each of the authorities in Scotland has managed to put in place the infrastructure that is required for an authority to be effective. That is no small achievement because, as you will all be aware, the legislation did little to put in place the necessary infrastructure that would be required to run a public body.

The Convener: I think that it is fair to say that the very reason why we wanted you here is that we did not see much in the way of comment in the bill and we felt that you both had a useful view to offer on behalf or your respective organisations and your collective body.

Bill Butler: What lines of communication and joint-working arrangements are in place between, for instance, the SPS and the other key stakeholders? Mr Hodgkinson, you said that you have been liaising well with the police and the SPS, but it would be useful if you could go into that in more detail.

Mark Hodgkinson: I will struggle to give you much in the way of specific detail. That is not because I do not want to but because the project is still in development. We are still developing a

range of working groups to support the CJA and to devise, for example, the means of reporting on the performance of not only the SPS and the local authorities' criminal justice social work services but the other key players, such as the statutory partners—the health service, police, courts and so on—and voluntary organisations. We are still at quite an early stage. What will be particularly challenging is ensuring that the links are right with respect to key parts of health services, substance misuse services and forensic services. That will be particularly challenging for community justice authorities such as the northern CJA that cover a very large area with massive problems of transport and geography. Therefore, significant challenges remain. The signs are that people are willing to take part, but we are still working out the best ways of doing that.

Bill Butler: While recognising the incipient nature of CJAs, I ask Mr Hawkes whether he would like to add to his colleague's words.

Chris Hawkes: I recently ran a Lothian and Borders community justice authority workshop that was attended by 30 representatives from the multitude of agencies that, along with the local authorities and the Scottish Prison Service, are covered by the legislation. Every person who attended that workshop could identify something that they could do to contribute towards the achievement of the reducing reoffending strategy. That shows the broad range of commitment that exists among all the players to make the legislation work.

Bill Butler: So stakeholders have not shown reluctance—quite the opposite.

Chris Hawkes: Absolutely.

Mark Hodgkinson: That is correct. I echo the comments that Mr Hawkes has made. We organised two seminars that were attended by a wide range of people. Because of the nature of the geography of our area, many of them had to catch an aeroplane to attend the seminar.

Michael Matheson: The fact that the bill will require risk assessment and risk management to be provided for all prisoners who serve a sentence of more than 15 days will clearly create a significant level of additional work for, apparently, some people within the SPS and for criminal justice social work services. I am conscious that you have been in post for only a limited time, but can you give us some idea of how prepared those different parts of the workforce are for the increase in their workload that will result from the bill?

Chris Hawkes: As we heard clearly from Mr Cameron when he gave evidence earlier this afternoon, the Scottish Prison Service does not currently undertake risk assessment of offenders who serve less than four years. A significant implication of that aspect of the bill is that the Scottish Prison Service will need to put in place a mechanism for undertaking a risk assessment—we are talking about risk of reoffending and risk of harm—and a needs assessment for a huge number of short-term offenders. Such a mechanism does not currently exist.

I would go a stage further than that. At the moment, we do not have a model of risk assessment that could be used effectively in that environment. Furthermore, having spent a long time working with offenders in Scotland, I think that we recognise that any model of risk assessment must have two components to it. One component is known as the static factors, which are all those preconditions that indicate what the future risk might be. The other component is the dynamic factors, which are the factors that are concerned with those things that happen in ordinary life that increase risk. Arguably, custody is not the best environment to understand dynamic risk. Dynamic risk is to do with relationships, employment or the lack thereof, addiction, the availability of treatment services and mental health. A variety of dynamic factors that occur in the community are not present when the person is in custody. I would argue that custody is not the best environment in which to undertake an assessment of the risk of harm of future behaviour.

Michael Matheson: Where is the best location for that risk assessment to be undertaken? Is it within the community?

Chris Hawkes: We need to recognise that some significant work is already undertaken at some expense by local authorities. Approximately 50,000 social inquiry reports are undertaken by local authority social workers in preparation for the sentencing process in the sheriff court or High Court. Every one of those reports is required to include an assessment of the person's risk of reoffending and risk of harm and an assessment of need. As I say, that work is already undertaken, and it is normally available to our colleagues in the Scottish Prison Service. Although some offenders who receive a custodial sentence do not attract a social inquiry report—although I believe that a majority of them do—we could develop a clear, interchangeable model of risk assessment that works in the community, in custody and back out in the community again.

Mark Hodgkinson: I concur with everything that Mr Hawkes has just said. It would be advisable, almost as a prerequisite to the bill, for one single model of risk assessment, both in and outwith prisons, to be agreed to, settled on and issued. Having listened to the contributions at this meeting so far, I note that people use the word "risk" in a variety of ways. It is important that, when people

talk about high risk or low risk, everybody else clearly understands what they are talking about. Until that is made clear, there will be problems with the bill.

That is not strictly answering the question that you have asked. I have not had so much time to study the bill or the attached memoranda in great detail. I have seen part of the financial memorandum, which mentions a sum of £7.45 million. Essentially, that will get spent on lower-risk, short-term offenders. If asked, I could suggest much better ways in which to spend that amount of money.

The Convener: You seem to be offering various models. The committee would welcome it if you could send in some of the options and your ideas about definitions. One committee member raised that point earlier this afternoon.

Michael Matheson: I come now to the second part of my question, which is about risk management. Responsibility will fall on criminal justice social work services. How prepared are they for the potential increases in workload that they will have to undertake as a result of the bill?

Mark Hodgkinson: I started working as a criminal justice manager around 1998, right at the start of a transformation in the relationships between criminal justice social work services, the police and the management of high-risk offenders. I think that local authorities and the police generally work extremely well together now when it comes to jointly managing the risks that are posed by potentially dangerous offenders. Sadly, that is not well understood by the general public.

However, short-term offenders are by definition unlikely to require risk management—that is, management of the risk of serious harm that they might pose to the public. I do not know whether the local authorities or police even need to work together in that respect but, in those cases where they do, they are probably very well equipped under the existing procedures and under the developing procedures for managing high-risk offenders in the community.

Jeremy Purvis: I put it to the minister earlier that, as the bill is framed, the assessment that is undertaken for all those who are sentenced to more than 15 days in custody is to do with whether or not the person is likely to cause serious harm to members of the public. That is quite a high threshold. There is nothing in the bill to provide for an assessment that is wider than what the Scottish Prison Service does at the moment, which is to signpost or refer people to services or to schemes such as the link scheme; nor is there any ability to include conditions according to which the individual will be supervised in the community to some degree. That means that 80 per cent of the prison population will not benefit from any of the risk management measures. Those measures will make no difference to them. Could you expand a bit on what you said about spending money better? If the proposals will incur annual revenue costs to the Prison Service of nearly £6 million—plus nearly £1 million to local authorities in addition—can Mr Hodgkinson and Mr Hawkes indicate how the resources could be differently targeted?

17:15

Chris Hawkes: Lothian and Borders community justice authority welcomes the intention of the bill, the concentration on the importance of transparency in sentencing and the commitment to reduce reoffending. Our concern is that it is significantly mistargeted, which goes right to the heart of the issue that Jeremy Purvis raised. The majority of short-term prisoners will not have a risk assessment or supervision plan; we would delude the public if we pretended that the bill would assist those offenders. They would be much better placed if they were left in the community, subject to supervision through probation orders, drug treatment and testing orders, supervised attendance orders or community service orders. They would receive a much better service, appropriate to the level of risk that they presented.

We understand how destructive custody is, especially when it is delivered for such short terms. There are no positive outcomes of short periods in custody. In the circumstances that Jeremy Purvis described, we pretend that something will happen through a sentence that has a custody component and a supervision component, but it will not. My real concern is that the sentences will not reduce the numbers of people in custody but increase them, because people will think that there is a punitive component and a supervision component to the sentences. In fact, the majority of people who are sentenced—Jeremy Purvis said that the figure was 80 per cent—will get the punitive element of the sentence and will be in custody for a relatively short period. We know that that is destructive and sends people back into the community who present a 60 to 80 per cent risk of reoffending. We know that if we use community-based alternatives for such offenders, we get much better outcomes in relation to reducing reoffending.

The cost of keeping an offender in prison for six months is £16,000. The cost of keeping someone on a probation order in the community for one week is £30. Is it not surprising that what we know to be most effective gets the least resource, and what we know to be least effective gets the majority of the resource? There is a fundamental problem that needs to be addressed through

resource transfer and the transfer of people away from short-term custody into community-based disposals.

The Convener: Mr Hodgkinson, you came up with a figure.

Mark Hodgkinson: I quoted the figure from the financial memorandum, which is a considerable sum. You asked for a shopping list, but before I suggest how money might be better spent, I have to say that, given Scotland's limited resources for addressing crime, prioritisation is extremely important. I concur with Mr Hawkes's remarks, especially in relation to finance. Some local authorities in some community justice authority areas have developed and are funded to provide effective programmes to deal with men who have been sentenced to probation or are on licence, having committed serious offences of domestic abuse. However, the provision of such services is exceptionally patchy, despite considerable evidence of their effectiveness. Rather than pouring resources into increasing the prison population with short-term offenders who are persistent but relatively minor offenders, putting money into services that we know are effective would be hugely beneficial by comparison.

I can suggest two other areas for which funding might be helpful. There is a major link between crime and substance misuse—it is mainly alcohol in the area of the northern community justice authority, but there is also drug misuse. Health and education services in respect of alcohol and drug misuse would have a significant impact on the levels of crime, offending and therefore reoffending.

I will mention one other long-term rather than short-term measure. I do not know whether the committee has heard evidence on the work of the violence reduction unit, which receives funding from the Scottish Executive, or the research of the WAVE Trust into the root causes of violence and the amount of good that can be done by resourcing a major effort on the root causes of violence. In the long term, such an effort could prevent many people from becoming victims of serious violence in Scotland. That would be a far better and more effective use of resources than spending money on increasing the prison population significantly, which the bill will certainly do.

The Convener: I ask Bill Butler whether that answered all the questions that he was going to ask.

Bill Butler: That answered all the supplementaries that I had in my mind.

Jackie Baillie: My questions are by and large answered, but let me ask some just to round up the session. Part 1 of the bill has three high-level objectives: first, that we should have a clearer and more understandable system for managing offenders while they are in custody and in the community; secondly, that we should take account of public safety; and thirdly, that we should have victims' interests at heart. How well will the bill achieve those three aims?

Mark Hodgkinson: One measure in the bill that I support is the notion that, when a sentencer passes sentence, there should be some explanation of what it actually means. However, when I listened in the anteroom to the explanation of the Executive official who was with the minister, the provision became less clear to me and I am now not sure that the bill will achieve clarity of sentencing procedures.

Because I am not sure that the bill will achieve any greater clarity, I am not sure that the public's confidence in the system is likely to be greatly enhanced. I have spoken to somebody senior at the Scottish Executive about ensuring that the public understand better how the criminal justice system works and why. The community justice authorities and the Executive have work to do in producing a joint communication and publicity strategy to try to overcome what seems to be the persistently hardline lock-'em-up-for-longer approach that some of the tabloid newspapers, for example, espouse. Such a strategy might be a better approach.

I have a horrible feeling that the bill will run counter to the aim of reducing reoffending. The bill is likely to mean that sheriffs will lock up more people. At present, sheriffs have a stark choice between a community sentence and a custodial one but, under the bill, there will be a much more softened system in which sheriffs can combine both. Therefore, with somebody who at present might get a straight probation order, the sheriff may view the fact that there will be some licence or supervision following the custody part of the sentence as a way of achieving punishment and rehabilitation in one order. It is clear that the bill will mean that more people will spend longer in prison.

All the efforts to join up services between the community and the Prison Service are likely to be somewhat undermined by the Prison Service's having to deal with the number of people who are entering and leaving prison.

As part of the preparation for our area plan and our consideration of working jointly with the Prison Service, I recently spent some time at the prison in Aberdeen. The work done by the staff and the governor was fantastic. I cannot imagine how they achieve what they do, given that they are so impeded by the problem of overcrowding. A group of prisoners who need protection are taken out for activity then moved back in and locked in their

cells while another group does the same activity. Everything is done on a rota. It is a matter of making do. Further increasing that problem by increasing the size of the population is a big worry. I have to say that I now feel less confident than I did previously about making a success of the community justice authorities and getting into the meat of the bill.

Chris Hawkes: I do not believe that the bill is wholly negative. What is wrong with the bill is that the thresholds are wrong and the proportionality is wrong. It would be a significant advance if we could get offenders who serve periods of less than four years back into the community and into a community in which there are services that address needs around literacy, alcohol, drugs, employment and mental health services—the list goes on. That range of normative services should be available to everyone in the community.

The offender group is, by and large, currently denied access to those services. The purpose of the community justice authority is to ensure that the transition can be made and that there is that level of integration of services for offenders when they come out of custody. However, as the bill stands it would overwhelm the Scottish Prison Service, local authorities and independent providers. We need a clearer threshold that is arrived at more rationally. I know that previous witnesses before the committee have suggested six months, 12 months, 18 months and 24 months.

We must consider the issue. I believe that Bill Whyte described two years as being the minimum period necessary in which to undertake effective work with offenders. Let us examine effective practice both nationally and internationally and ask what is effective in work with offenders. The bill seems to include some things that are effective and some things that we know are ineffective. Why pass a bill that has ineffectiveness built into it? Let us pass a bill that has a good chance of succeeding because it is based on effective practice.

The Convener: In the absence of further questions, I thank you both for the clarity of your evidence and for the direction in which you have sent the committee, which is an inquiring one. I thank you also for your forbearance in relation to the delay before we asked you to come.

As that was the final evidence session on the bill, I seek the committee's agreement to consider the options paper and the draft report in private at future meetings.

Members *indicated agreement*.

SUPPLEMENTARY SUBMISSION FROM HMP CORNTON VALE

Mr Gunn was asked by the Justice Committee yesterday to supply some stats on Home Detention Curfew. Here is the information requested:

Total granted HDC	= 64
Total out on HDC at present	= 25 (+ 1 being recalled - still at large)
Total breaches to date	= 5 (including 1 still at large)
Total successes to date	= 27

I trust this information will be sufficient. If there is anything else required please do not hesitate to contact me.

SUPPLEMENTARY SUBMISSION FROM HMP BARLINNIE

I appeared before the Committee to give evidence on the Custodial Sentences and Weapons (Scotland) Bill on the above date. The Committee requested additional information on some points discussed and these are as follows:

1. **Home Detention Curfew (HDC)** figures for HMP Barlinnie from 1st July 2006

HDC Releases =126

Number of recalls 12 (3 for offending) 2 x breach of the peace 1 x domestic violence.

2. **HDC Criteria** – see attached HDC Form (HDC3)

3. **Barlinnie Assessment Referrals** (see attached pie diagram) dated the 24th of November 2006

4. **Staff Training Programmes:**

Below are the training periods for staff in order to become competent and accredited to facilitate each of the following programmes, Cognitive Skills, Anger Management, Drug Relapse and Rolling Stop.

Cognitive Skills
An initial 10-day course with a 5-day follow up. The course is being replaced by Constructs which will be phased in from February 2007.

Rolling Stop
A fundamental skills course of 5-days followed by the Rolling Stop Course which is a further 5 days.

Drug Relapse Prevention Known as Lifeline
An initial 5-day course

Anger Management Initial
An initial 5-day course with 3-day follow up.

I think this covers the points raised.

FORM HDC 3
[V 2.0 - September 2006]

Core Details

Name	Number

Sentence	Y	M	D

HDC Qualification Date	

EDL	

Statutory Exclusions	**Y / N**
Prisoner is required to register as a Sex Offender	
Prisoner has an Extended Sentence	
Prisoner has a Supervised Release Order	
Prisoner has previously been recalled from licence	
Prisoner is subject to a Hospital Direction	
Prisoner is awaiting deportation	

SPS Risk Assessment		**Y / N**
Prisoner is High or Medium Supervision	**PSS Review Date:** / /	

Evidence exists that Prisoner:	**Y / N**
Has a history of sexual offending	
Has been convicted of a Schedule 1 offence	
Has a history of domestic violence/abuse	
Has not engaged in Core Screen/CIP	
Has displayed serious adverse behaviour while in prison (e.g. violent/threatening behaviour)	

Details of index & previous offence(s) and evidence taken into account in Risk Assessment (and the source)
(Include references to documentation or input from non-SPS sources (e.g. Social Enquiry Reports)

Describe any other mitigating factors taken into account during the risk assessment
(these will be dynamic factors identified through personal knowledge of the prisoner and his/her background)

Community Assessment Authorised
(the following non-standard licence conditions should be recorded on form HDC 2a)

	(Signed)

Management Decision

Release on HDC granted	
HDC Release Date:	

Release on HDC refused	
HDC Review Date: (if applicable)	

Release on HDC is subject to the following licence conditions

1. Standard HDC Licence Conditions

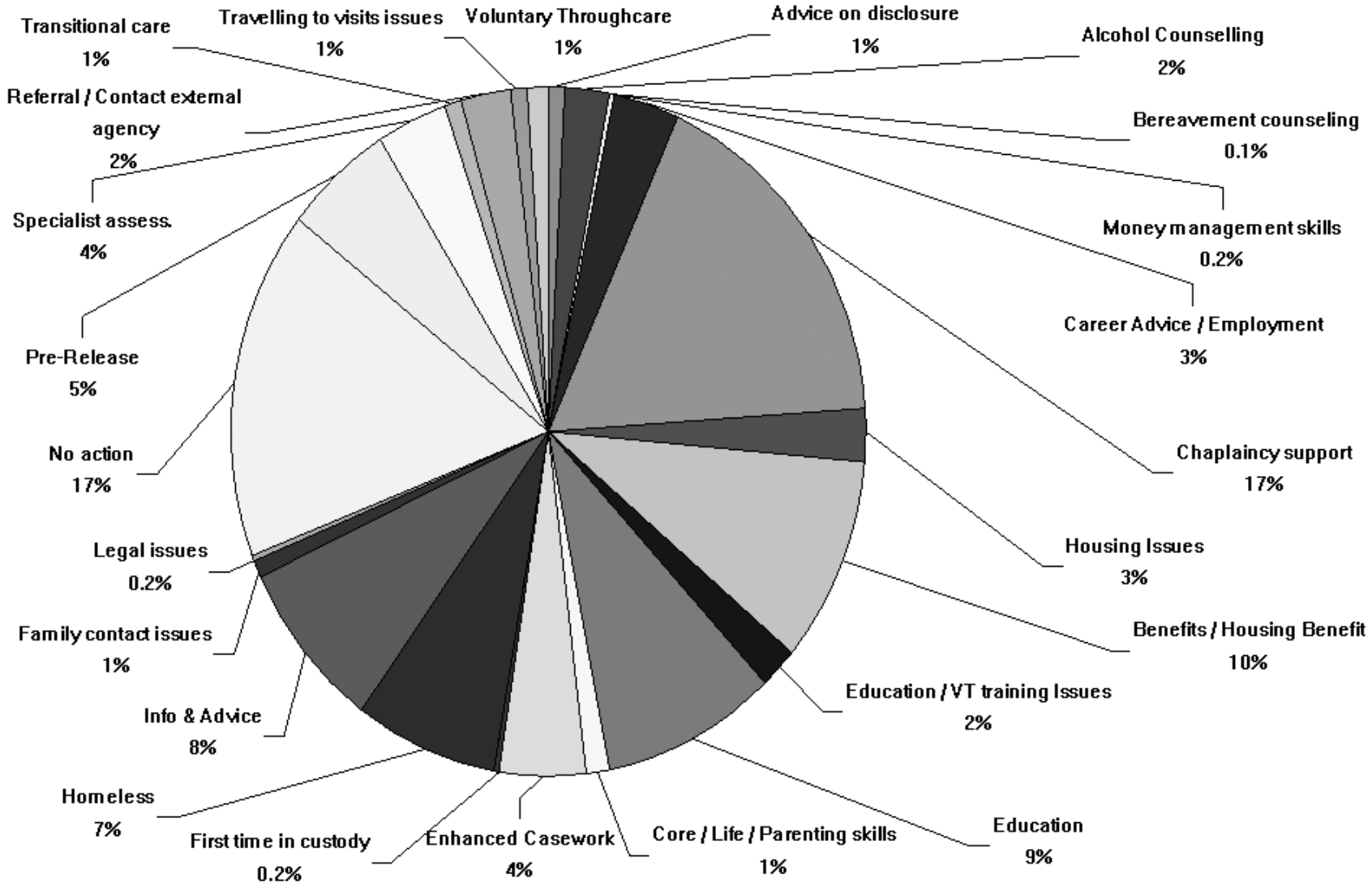
2. Curfew (e.g. 19:00 to 07:00): _____ to _____

3. Special Curfew (e.g. curfew times changed due to regular domestic commitments): _____

3. Non-standard conditions (if applicable):

(Signed)	***(Dated)***

BARLINNIE PRISONER ASSESSMENT REFERRALS



As at 24 November 2006

LETTER FROM DEPUTY MINISTER FOR JUSTICE, 6 DECEMBER 2006

I agreed following my appearance at the Committee's session on 28 November to provide further detail on a number of issues raised during what I hope you found to be a helpful exchange.

I want to stress again that the measures in the Custodial Sentences and Weapons (Scotland) Bill are about sentence management, not sentencing itself. They do not affect the range of disposals available currently to the judiciary nor do they change their sentencing powers. The new regime will only apply to those cases where a judge has decided (in the same way as s/he would now), in light of all the circumstances of the offence and the offender that firstly, a term of imprisonment is the most appropriate disposal and, secondly, what the length of that term will be.

However, we are changing the way that sentences are managed. These proposals build upon the measures provided for in the Management of Offenders etc. (Scotland) Act 2005. In doing so, we are aiming to strike the right balance of punishment, rehabilitation and public safety in a way that contributes meaningfully to our work to reduce re-offending and the number of victims of crime. For the first time, all offenders will be under restriction for the full sentence. For those sentenced to 15 days or more, the combination of a period in custody and a period in the community - where the offender will be subject to licence controls - provides the opportunity to work with offenders to address their offending behaviour both during the period in custody and continuing in the community. This is so much more than is done currently with the vast majority of offenders. Under the regime outlined in the Prisoners and Criminal Proceedings (Scotland) Act 1993, all offenders sentenced to less than 4 years simply walk away at the half-way point of their sentence without any control or support. The new measures in the Bill will also provide additional protections for the community against those who present as a high risk of harm. Such offenders can be kept in custody for up to 75% of the sentence and will then be subject to strict controls that would include intense supervision in the community and, where considered appropriate, electronic monitoring.

I believe that this substantial package of reforms will see the end of the current unflexible system of automatic unconditional early release for all offenders, provide clarity in sentencing by making it clear at the time of sentence the minimum period to be spent in prison, take account of public safety by targeting risk and will help tackle re-offending by giving offenders rehabilitive opportunities.

Clarification of section 6 of the Bill

Nothing in the Bill is intended to alter or affect the overall sentence which the judge or sheriff would otherwise have imposed. Section 6 deals with the setting of the custody part of the custody and community sentence once the judge has decided (as he/she would do now) that, having regard to all the information available at the time of conviction about the circumstances of the offence and the offender, imprisonment is the most appropriate disposal. This information can include details about an offender's risk as it presents at that time. Nothing in the Bill prevents the judge from continuing to take account of that information when passing the sentence. Section 6 applies once that sentence is passed.

Section 6(2) provides that the custody part is the period required for "retribution and deterrence" combined. This is the "punishment" element of the sentence. We are content that the term "retribution and deterrence" will be recognised by the judiciary and the public and that it is broad enough to take account of the impact of the crime on the victim and on the public generally. The term has the same meaning for all offenders, including life sentence prisoners.

Section 6(3) prescribes that the custody part must be a minimum of half of the total sentence (eg if the sentence is 6 years, the minimum period that the offender can expect to spend in custody will be 3 years). If the judge is satisfied that the minimum period is adequate for the purposes of "punishment" then he/she will say so. However, if the judge decides that taking into account the factors set out in section 6(4), that half is not enough then that proportion can be extended up to three quarters of the total sentence (using the 6 year example – that would be 4.5 years). The factors at section 6(4) are what we consider to be the central constituents of "retribution and deterrence", or punishment.

Concerns have been raised about the requirement at section 6(5) for the court effectively to "strip out" from the custody part any period that would be necessary for public protection. As we explained when we gave evidence to the Committee, the purpose of the new custody and community structure is to ensure that all sentences of 15 days or more are managed from beginning to end. This approach will enable developments during the entire sentence to be identified and managed – both in custody and the community - in a way that enhances public protection and contributes to reducing re-offending. As noted above, there is nothing in these provisions that will prevent a judge, in so far as this would be the practice at present, from taking into account information available at the time of conviction relevant to an offender's risk. However, we cannot expect a judge to be able to see into the future and predict risk at the halfway point of what may be a lengthy sentence. That is why there are complementary measures in this package that will enable the ongoing assessment in custody to inform risk as the offender moves through the custody part. If that risk remains high, then the offender will be referred to the Parole Board which can direct that the offender remains in custody for up to 75% of the sentence.

Annex A provides examples of sentences under the current and proposed arrangements which I believe show very well the benefits of the new system.

We appreciate the importance of this section within the package of reforms. We are therefore checking the current provisions carefully against the helpful comments from others who have given or submitted evidence – in particular the Sheriffs' Association - with a view to deciding whether any clarifying amendments may be required at Stage 2.

Who will refer the cases assessed as risk of serious harm to the Parole Board?

The Committee has sought clarification of who would refer cases to the Parole Board. The Bill and its accompanying documents are clear that the duty to refer cases to the Parole Board remains (as is the case at present) with the Scottish Ministers. This is currently carried out under delegated authority by the Scottish Executive Justice Department. As paragraph 58 of the Policy Memorandum notes, there remains scope for fine tuning of how Scottish Ministers' functions are split between the Justice Department and SPS. These considerations will be included in the work of the top level planning group to which I referred when I gave evidence. I would stress that, whatever the decision, these are operational issues which flow from the Bill and do not affect the terms of it.

We are conscious, however, of the important role currently played by Scottish Ministers in taking decisions in individual criminal justice cases. It was announced, therefore, when the Bill was published, that there would be an independent review of their role. This review will clarify the precise arrangements which should apply to that decision making process as it is implemented.

The Committee has asked about the information that will inform decisions to refer cases to the Parole Board. Moving away from the current arrangements where cases are referred to the Board based on sentence length as opposed to risk, will allow the Board, under the new arrangements, to better fulfil its core function of assessing whether an offender's risk is such that he/she should be detained in custody for longer before moving to the community part of the sentence and to set down the conditions under which the offender will serve the community part of the sentence. During the custody part, the risk of serious harm to the public that an offender may pose will be assessed on a regular basis as part of the sentence management process. The Bill makes provision for joint working arrangements between Scottish Ministers (in practice the SPS) and the local authorities to enable appropriate risk assessment and risk management processes to be established. We recognise that the level of this joint working and of the assessments carried out will need to be proportionate to the nature of the offence and to the length of the sentence. This will require the development of new practice. We are already working with the Risk Management Authority, which is also represented on the top level planning group.

It is hoped to build on the Integrated Case Management (ICM) system developed by the SPS which currently applies to offenders subject to post-release supervision, i.e. those sentenced to 4 years or more, sex offenders sentenced to 6 months or more, offenders on extended sentences and offenders serving life sentences (in total about 3000 a year). It provides for the compilation of information relating to offending, risk and needs of each offender, assessment, initial interviews

with each prisoner, social work input and integrated case conferences for each offender. The Bill provides for joined-up arrangements with the appropriate local authority and the SPS working together in assessing an offender's risk, during the custody and community parts of the sentence. Managing an offender's risk from the beginning to the end of the sentence will further enhance public protection. This is a matter of process which will be looked at, amongst other issues, by the Planning Group. The remit and membership of the Planning Group are detailed at Annex C.

Different tests for recall following breach of licence and re-release

It may be helpful to the Committee to explain the difference between the tests for revocation of licence (in section 31) and for re-release following revocation (in section 33). The reasons for wanting the proposed test for recall are at least two-fold: first, Scottish Ministers wish to have the flexibility to recall a prisoner where they have reasonable cause to believe (but do not necessarily have hard evidence) that a licence holder poses a threat to the public; and, secondly, licence-holders must realise that if they do not observe the conditions of their licence then they are liable to continue to serve their sentence in custody. The first of these reasons is the backbone of the "public interest" test in section 31(3) and (5)[16]. The second is designed to make it plain, as I think it is entirely right to do, that each of the licence conditions must be taken seriously by an offender and must be observed.

Once an offender has been recalled, the policy intention is that the test for continued detention should be the same as the test for continued detention at the expiry of the custody part or, for a lifer, the punishment part. Where recall is on the basis of, for example, serious charges of assault, the serious harm test will almost certainly be met and continued detention will be appropriate. However, in the situation where someone has for instance failed to live at a particular address in breach of a specific licence condition, the Board will only be able to refuse to direct release if, on investigation, it considers that the offender poses a risk of serious harm. This will involve consideration of the reasons why he/she has failed to live at the address, which could be innocuous or could, for example, be an indication of concern that the offender will try to avoid supervision and return to the behaviours or circumstances which led to the original offence being committed.

We consider that applying different tests for recall and continued detention following recall is an entirely sensible and reasonable approach. It aims to protect the public (where there is risk of serious harm) and to encourage prisoners to observe their licence conditions (where there may be no such risk but the prisoner nonetheless is not complying, meaning that the community part of the sentence is not able to be properly managed).

If, for the sake of argument, we were to make the recall test that of serious harm, it would allow prisoners to disregard any or all of the licence conditions provided that they do not pose a risk of serious harm. For example, if they travel abroad on holiday with their family or friends in breach of a condition not permitting them to leave the UK while on licence, then there would be no sanction for breaching the licence condition. It would also not be possible for Scottish Ministers to recall someone to custody on the basis of early concerns that all may not be well, but rather we would have to wait until the risk of serious harm could be substantiated, possibly resulting in a further offence being committed.

If, on the other hand, the Board were to apply the "public interest" test for re-release then those who were recalled for failure to comply with a condition might not be re-released, even if subsequent investigation revealed that the breach was a relatively minor one and did not, in fact, put the public at any risk. As the Bill stands, in such a situation the Board might wish to direct re-release but with tightened licence conditions.

[16] The Committee will note that section 31(1) applies to prisoners on licence in the community and section 31(4) to those on licence but who are in jail at the point the licence is revoked (perhaps because they are on remand for another charge). The only difference is that, in the former case, which will be the typical one, the prisoner's licence is revoked and he/she is recalled to prison, whereas in the latter there is no need to recall to prison (as that is where the prisoner already is). However, the test to be applied by Scottish Ministers in considering whether or not to revoke the licence is the exactly the same in each case.

Finally, I might add that we have not seen any other evidence from commentators of how we might balance the rights of both the public and the offender in a better and more effective way than that proposed in the Bill.

Standard licence conditions

The Committee asked if consideration was to be given to including standard licence conditions on the face of the Bill. The current legislation does not set out statutory conditions and we do no intend to prescribe them in this legislation. The reason for this is that conditions will be informed by the individual joint risk assessment which will be carried out for each prisoner. The risk assessment will have regard to a range of factors including the nature of the offence, the offender's response during the custody period and the anticipated circumstances on release, providing flexibility and discretion. Although there may well, in practice, be certain conditions which are typically applied, both by the Parole Board and by Scottish Ministers (as happens at present), we wish to preserve the flexibility to tailor conditions to each prisoner individually. That would, in some cases, be hampered if there were statutory conditions to be applied to all licences.

All offenders serving a sentence of 6 months or longer will receive statutory supervision. So will other categories of prisoner, as set out in section 27(2) of the Bill. (Examples of typical conditions that might apply to an offender subject to supervision are attached at Annex B.) The intensity of that supervision will vary from offender to offender and will be informed by the joint risk assessment. The licence, however, may contain a number of additional conditions requiring anything from drug and alcohol counselling, restrictions on movement and travel, through to closer supervision by social workers or tagging. It will also be competent to include a supervision condition, or a number of additional conditions, in the licence of a person sentenced to under 6 months, if that were considered to be appropriate.

No requirement in the Bill for offenders sentenced to less than 6 months to have conditions attached to licence

The core element of the Bill is that now **all** offenders sentenced to 15 days or more will be subject to a licensing regime that fits their risks and needs, thus enhancing public protection. Sections 24 to 26 of the Bill allow for licence conditions to be attached to the community part of the sentence for all custody and community sentence prisoners and life sentence prisoners. It is a reasonable assumption that most of those sentenced to under 6 months will be assessed as a low risk of 'harm' to public safety and will not require what we currently understand as "supervision". The needs of this group are more about providing opportunities for rehabilitation through access to the range of services that they need – such as drug treatment or accommodation services – to help stabilise their lifestyles and to move them away from offending. The licence conditions may only require conditions that require the offender to be of good behaviour and keep the peace and that he/she does not travel outwith Great Britain. However, there will be cases where supervision based on the assessed level of risk is considered necessary for this group.

Scottish Ministers have said many times before that we must move from a system that is driven by sentence length to one based on risk. That applies equally to offenders sentenced to a short period of custody. The Bill provides a substantial package of reforms that significantly improves the present system.

When will the draft Parole Board rules be available?

As the Committee will be aware, a draft of the rules to be made under section 2 of the Bill will be shared with the Parole Board for Scotland, SPS and ADSW in order to allow them to comment on the proposals. This will be particularly important in relation to the time limits applicable to the various procedures which will need to take place following the reference of a case by Scottish Ministers to the Board. To enable all parties to be fully involved in this process, it is anticipated that a first draft would be ready by February 2007. I would in any event let the Committee see the first draft once we have consulted all relevant parties and will keep you informed of any changes to this timetable.

I appreciate that the time limits applicable to the various procedures that will need to take place following the reference of a case by Scottish Ministers to the Board have been commented on in the Board's written evidence, particularly in relation to those serving short sentences. I can assure the Committee that there will be no question of Scottish Ministers referring a case in insufficient time for the Board to deal with it. Scottish Ministers have said on more than one occassion that they are committed to ensuring that the Board is legally competent and that it is properly resourced, but resourced in the most efficient and adequate way while at the same time securing best value for money.

I hope you find this helpful. We will gladly provide any further information the Committee may require.

ANNEX A

EXAMPLES OF SENTENCE UNDER CURRENT AND NEW ARRANGEMENTS

Example 1 2 year sentence passed by the court taking into account retribution, deterrence and public protection. This happens currently and will not change under the new arrangements.

Current arrangements	**New arrangements**
No indication given at the time of sentence of period to be served in prison	Indication at the time of sentence that a minimum of 1 year will be spent in prison (custody part) but that the offender could serve a maximum of 18 months. Offender could also be recalled to serve remaining term if licence was breached.
Offender released automatically after 1 year in prison	Offender's risk assessed and released between 12 and 18 months of the total sentence
Not subject to restrictions/ statutory supervision in the community	Subject to licence restrictions and supervision in the community
May only be returned to custody if convicted of an offence committed during the second year of sentence (at discretion of the court)	May be recalled to custody for breach of licence (not necessarily a new offence) and could, subject to review by the Parole Board, remain in prison until the end of sentence

Example 2 12 year sentence passed by the court taking into account retribution, deterrence and public protection. This happens currently and will not change under the new arrangements.

Current arrangements	**New arrangements**
No indication given at the time of sentence of period to be served in prison	Minimum custody part would be 6 years, however, judge considers that the period in custody should be more than the minimum. Judge indicates at time of sentence that given to the serious nature of offence, history of violence and the fact that the offence was committed when on licence from a previous sentence, a minimum of 8 years will be spent in prison (custody part) but the offender could serve a maximum of 9 years. Offender could also be recalled to serve remaining term if licence was breached.
Parole Board reviews suitability for early release on parole at 6 year stage of sentence	Assessed as presenting a risk of serious harm and referred to the Parole Board at 8 year stage of sentence to decide whether he/she should continue to be defined
Released between 6 and 8 years on supervision and subject to licence conditions	Released between 8 and 9 years on supervision and subject to licence conditions
Subject to restrictions/ statutory supervision in the community	Subject to licence restrictions and supervision in the community
May be recalled to custody for breach of licence (not necessarily a new offence) and could, subject to review by the Parole Board, remain in prison until the end of sentence	May be recalled to custody for breach of licence (not necessarily a new offence) and could, subject to review by the Parole Board, remain in prison until the end of sentence

ANNEX B

EXAMPLE OF LICENCE CONDITIONS WHERE SUPERVISION IS A REQUIREMENT

In accordance with the provisions of section [insert section] of the [insert Act], the Scottish Ministers hereby release you, *[insert Prisoner's Full Name]* (DoB [insert date of birth]), on licence with effect from [insert date of release].

You are required to comply with the following conditions (which may be added to, varied or cancelled at any time before the expiry of the licence):-

1. You shall report forthwith to the officer in charge of the office at

[insert full postal address of the supervising Council]

2. You shall be under the supervision of [insert title and full name of supervising officer] or such other officer to be nominated for this purpose from time to time by the Director of Social Work/Chief Probation Officer of [insert name of Council].

3. You shall comply with such requirements as that officer may specify for the purposes of supervision.

4. You shall keep in touch with your supervising officer in accordance with that officer's instructions.

5. You shall inform your supervising officer if you change your place of residence or gain employment or change or lose your job.

6. You shall be of good behaviour and shall keep the peace.

7. You shall not travel outside Great Britain without the prior permission of your supervising officer.

[insert any additional conditions]

Failure to comply with these conditions may result in the revocation of your licence and your recall to custody.

This licence expires on [insert sentence expiry date] unless previously revoked

ANNEX C

CUSTODIAL SENTENCES PLANNING GROUP

Background

The Custodial Sentences Planning Group (CSPG) was established in September 2006 to oversee the implementation of those provisions in the Custodial Sentences and Weapons (Scotland) Bill that relate to the sentencing and release of offenders from custody. All criminal justice agencies are represented on the Group as the provisions will impact on all of the main service providers. The Group is chaired by the Justice Department's Head of Criminal Justice Group and supported by a small Secretariat.

Remit

The Group's remit, as agreed by the members at the first meeting is:
"To implement the changes in law covering the release and post custody management of offenders. Specifically to:

- agree and deliver an action plan covering the key implementation tasks
- agree the implementation pathways, timings and interdependencies and identify how the policy will be delivered in practice
- monitor and review progress on a regular basis
- scan the horizon to anticipate, identify and handle upcoming issues that need to be managed
- report to Ministers."

Membership

Membership of the CSPG is as follows:

Name	**Organisation**
Valerie Macniven (Chair)	SEJD Head of Criminal Justice Group
Jane Richardson	SEJD Parole and Life Sentence Review Division
Elizabeth Carmichael	SEJD Community Justice Division
Colin Mackenzie	Association of Directors of Social Work
Alan Baird	Association of Directors of Social Work
Sheriff Hugh Matthews	Sheriffs' Association
Alison Di Rollo	Crown Office and Procurator Fiscal Service
Rachel Gwyon	Scottish Prison Service
Eric Murch	Scottish Prison Service
David Forrester	Scottish Court Service
Marlyne Parker	District Court Association
ACC Iain Macleod	Association of Chief Police Officers (Scotland)

DS William Manson	Association of Chief Police Officers (Scotland)
Anne Connelly	Community Justice Authorities
Professor Sandy Cameron	Chair, Parole Board for Scotland
Rosin Hall	Chief Executive, Risk Management Authority
Lindsay McGregor	Convention Of Scottish Local Authorities
Neil Paterson	Victim Support Scotland
Sue Matheson	Safeguarding Communities Reducing Offending
Angela Morgan	Families Outside
Ruaraidh Macniven (as observer only)	Lord President's Office
Diane Machin	SEJD - Secretariat
Graeme Waugh	SEJD - Secretariat

LETTER FROM SCOTTISH EXECUTIVE JUSTICE DEPARTMENT, 15 DECEMBER 2006

Your note of 13 December reported that the Committee has asked for some further information on the question that Ms Macmillan asked the Deputy Minister for Justice when she gave evidence on 28 November about what consideration had been given to the "use of conditional imprisonment in preference to short custodial sentences".

As the Minister explained in her oral and written evidence, the purpose of the custodial sentences element of the Custodial Sentences and Weapons (Scotland) Bill is to end automatic unconditional early release and achieve greater clarity in sentencing. In short, this is about how the sentence is managed once the judge has decided on the appropriate disposal – in this case custody. As the Deputy Minister for Justice confirmed in her letter to the Committee of 6 December, the proposed measures do not affect the range of disposals available currently to the courts nor do they change the courts' sentencing powers. "Conditional imprisonment" is not presently a sentencing option for the courts and so to introduce such a measure would amount to a new sentencing option. Such a move would be outwith the scope of this Bill.

As the Minister pointed out, the purpose of the measures in the Bill is to ensure that where a judge had decided that custody is the only option in any particular case that the entire sentence is now managed comprehensively in a way that provides support for the offender and protection for the public with the overall aim of reducing re-offending. However, as the Policy Memorandum makes clear, the measures in the Bill are intended to form part of the Executive's wider programme of reform and will therefore build on the offender management structures introduced by the Management of Offenders etc (Scotland) Act 2005.

As respects existing alternatives to custody, Scottish courts already have at their disposal one of the widest ranges of community disposals in Europe and these are increasingly used. For example, in 2004-05 the number of community disposals imposed by the courts exceed for the first time the number of custodial sentences imposed. This suggests that the courts are already aware of the value of community disposals in the appropriate circumstances.

ANNEX E – Other Written Evidence

SUBMISSION FROM ABERDEEN SWORDSMANSHIP GROUP

I write to you in response to your Custodial Sentences and Weapons (Scotland) Bill currently being passed through Parliament. Having previously responded to the consultation entitled Tackling Knife Crime – a Consultation, you invited me to respond with my views on how the proposed legislation will affect the group I represent.

In brief, I represent the Aberdeen Swordsmanship Group, a not-for-profit organisation which provides training and study into Historical European Swordsmanship (HES). HES, also known as Historical Fencing, is a Western Martial Art dedicated to the practise of medieval and renaissance swordsmanship/swordplay. It involves reconstruction and replication of European fighting skills under realistic conditions, i.e. using historically accurate blunted steel swords. Currently HES is undergoing a revival and resurgence in Scotland and worldwide, and we are proud to be part of the re-discovery and reconstruction of a martial art from our very own culture. Within just three years the Aberdeen Swordsmanship Group has become the largest HES group in Scotland and second largest in the UK.

Whilst the members of ASG welcome measures to reduce crime, we cannot support this Bill in its present form. As we believe it will curtail the liberties of many law-abiding citizens. **We <u>insist</u> that Historical Fencing groups and organisations are added to the list of legitimate users and that the sale of swords to such groups be allowed to continue.**

This is necessary because Historical Fencing does not fall under any category in the current list of Legitimate uses as listed in the SPICe briefing 19 October 2006 (06/79).

- "Fencing" – Here you have used this term to describe **sport** fencers. HES does not fall under this category because it is not a recognised sport, and our swords are nothing like *"fencing swords"* you describe.
- "Martial arts" – while we are a martial art class, we are not recognised as one by any sporting body. Unlike many Eastern Martial Arts, e.g. T'ai Chi and Tai Kwon Do, we are not organised on a sporting basis. Becoming a sporting group would detract from our primary aim.
- "Historical re-enactors" – are living history re-enactors who put on shows and displays for the general public for educational purpose. While our activities are historically based, our classes are nothing like the activities of these organisations.

We feel strongly that Historical Fencing is does not fit into any of the above categories, and for that reason it merits a category of its own.

We are reviving a pastime from our Scottish culture; surely the Executive does not want to be seen as hindering Scottish traditions and a growing hobby? **Not acting upon this matter could effectively bring to an end the reconstruction of Historical European Swordsmanship within Scotland.**

Finally, I would like to resubmit the questions I posed in previous correspondence, which raise points that I feel the Committee still needs to address:

- **Does the new legislation take into account whether or not swords are blunt?**
- **Will blunt swords as a whole be exempt?**
- **What is the legislation's definition of a "sword"?**

Thank you for taking the time to read this letter. We dearly hope you can include Historical Fencers as legitimate sword users, as we believe we have a very strong case to be exempt from the ban of sales of swords.

SUBMISSION FROM ALLSTARUHLMANN UK

We are a major UK supplier of equipment used in the **Olympic sport of Fencing**, with our head office and warehouse based in Scotland. We also have a shop in London.

We have a significantly growing export trade.
With a view to the proposed legislation we have various observations and comments we would like the Committee to consider based on the draft bill and explanatory notes made available to date.

First of all we would wish to state that AllstarUhlmann UK is fully behind the objective of the Bill and, as with all such sensible objectives, would like to see where Scotland leads the rest of the UK will eventually follow.

We understand that the proposed Bill recognises the sport and sale of fencing equipment as a legitimate activity and is not intended to unduly restrict the day to day business of supplying equipment to bona fide individuals, clubs, schools, universities and coaches in Scotland or to hinder their activities or the development of the sport itself. However in practice we feel that the inclusion of our sports' equipment in the Bill at all has the potential to damage the whole public perception of the sport and could have significant impact to its future development and to us as a business in ways the proposed Bill has not foreseen. We believe that the NGB, Scottish Fencing, will be making representations regarding this in more specific terms.

We also work very closely with the NGB, Scottish Fencing, both as their major sponsor and provider of essential equipment to run competitive events throughout Scotland.

With a view to assisting us to continue to offer the high standard of service that our customers have come to expect, support for the NGB and coaches in Scotland whilst complying with the intention of the Bill, our understanding of certain options currently being considered for inclusion may have a detrimental effect both directly on us as a business, as well as the sport in general.

These are;

CCTV recordings of sales.
We sell in several ways. On-line via the Internet, mail order by phone, at events/competitions, to visitors at our warehouse and additionally to Coaches who earn there living from the sport.

We feel that with all these possible routes to our customers that CCTV recording of transactions would in some cases be impossible and in others, such as event/competition sales, be extremely impractical.

We currently record through the normal course of business what we sell and to whom. This applies to all transactions. These records are kept for a minimum of 5 years.
We would suggest that additional information could be recorded, such as; name of club attended, NGB membership number etc. if the Committee felt that this was helpful in achieving the Bill's objectives.
Additionally, event/competition sales and sales to coaches benefit from the fact that we know these customers are genuinely involved in the sport.

We would therefore request that the use of **CCTV records** is **not** included in the Bill.

Multiple Licence Applications.
As sponsor to the NGB, Scottish Fencing, we support events/competitions throughout the country. This takes the form of supplying the playing surface (piste) and the electronic scoring apparatus essential to the running of any event as well as making essential replacement of personal equipment used by fencers available for sale via temporary retail units.
Having to apply for an estimated 32 individual licences, all with potential differing conditions, would impact greatly on both our business and the sport. This also contrasts greatly with Internet only sellers who under the current proposals would only have to apply for one licence to sell to the whole country. This seems anomalous.
It would not be an exaggeration to say that if these events did not take place the sport's future would be put in serious peril. These events only run due to the crucial working relationship between equipment suppliers/sponsors, the NGB and event organisers that ensures all levels of participants are catered for across the country to enable Scottish Fencing to fulfil an essential part of it's development plan.

We would therefore request that a **single licence** option for retailers **is** included in the Bill.

Display of Foils, Epees and Sabres at events/competitions.
There are many differing specifications of the 'swords' used in the sport most of which are laid down by the world governing body, the FIE.
It is important that a competitor or coach has the opportunity to 'feel' the balance, flexibility, handle/grip fit in the hand etc, etc just as a tennis player or golfer would wish to do with a racquet or club. The more accomplished the fencer the more important this is. In practice a competitive fencer will customise their swords by selecting the individual components that suits them. To do this they have to be able to access these components, which includes the blade, easily at events/competitions.
Once their choice has been made we assemble on the spot often for immediate use.

There are over 60 blade types to choose from, this being the most critical single component. It is therefore important that fencers can easily examine them during the buying process and we as a business can provide this essential service to competitors and coaches alike.
We also offer this service to customers visiting our warehouse.

We would therefore request that the Bill recognises this important aspect of the sport in such a way that will **not restrict this practice.**

Lending or Giving of Swords.
As stated earlier we supply coaches and many types of clubs with equipment.
Both coaches and clubs lend equipment to beginners when they attend club sessions to enable them to participate as they learn the sport.
Additionally coaches and clubs lend equipment to novices to allow them to take part in competitions and training sessions outwit their club environment.
As a business we lend the NGB as well as regional event organisers equipment to enable novice fencers to try the different disciplines as they choose their preferred future pathway through the sport.
This facility is a fundamentally crucial aspect to attracting new participants and early stage development within the sport.
In particular, if coaches were required to be licensed to lend swords in such circumstances, bearing in mind coaches often travel to events and therefore different licensing authorities, with their pupils, this would seriously restrict their ability to coach.

We would therefore request that the lending and giving of swords by clubs, coaches and the NGB within the sport of fencing **be permitted** by the Bill.

Note. We would ask for clarification that lending or giving by us as a business would be permitted within the single license provision as requested.

Coaches and Clubs who act as Agents for sale of equipment.
There are very few permanent retail outlets (shops) that sell fencing equipment used in the sport of fencing in the UK and, apart from our warehouse, none in Scotland.
As already intimated Internet and event sales make up a fair percentage of our business.
Because of this historical situation many sales are made through coaches and clubs who take orders for their members acting as our 'agent'. The proposed Bill would appear to require every club and coach acting as an agent to apply for individual licences.
Coaches in particular who may work across local boundaries would have to apply for multiple licences which could impact on their ability to earn commission on sales as a much valued part of their income.
Clubs would probably stop offering this service and this again would damage our business.

We would therefore request that **'agents' are permitted to operate under the principal's single licence** by being registered agents of the principal.

We ask the Committee to consider the above requests and we would be happy to submit further information if requested to do so either in writing or by oral presentation.

SUBMISSION FROM PROFESSOR SHEILA BIRD

Sentences of less than 15 days will be spent entirely in Jail. Sentences of 15+ days will have minimum of 50% spent in jail. Thus, offender sentenced to 16 days shall spend minimum of 8 days in jail, whereas a lesser sentence of 15 days requires that s/he spends the entire 15 days in prison. The consequence will be perverse effects on how sheriffs determine the extent of shorter sentences, and this will impact differentially according to the time already spend on remand. If offender has spent 10 days on remand, his defence lawyer might plead for a sentence of more than 2 weeks to ensure the client's immediate release on licence.

The costs of judicial decisions re incarceration should be taken into account - additional care/custody costs to SPS are associated with each reception into prison, and discharge from it. There may also be differential costs for the 1st 7 or 14 days' incarceration (due to induction process for prisoners' health & well-being).

Costs (hypothetical) may be as follows: R (per reception day), I per day for 14 days post-reception, extra D for day of discharge, and P per other prison day. Suppose that R = 4P, D = P, I = 3P, then 15 days' served would cost R + 14I + D = 4P + 42P + P = 47P pricing units where P is the average price per routine prison-day, whereas 365 days would cost R + 14I + D + 350P = 397P, only 8.4 times more despite being 24.3 times longer in terms of time-served.

More generally, if R = rP, D = dP, I = iP, then 15 days sentence costs rP + 14iP +dP = (r+14i+d)P and 365-day sentence costs (r+14i+d+350)P.what values does SPS put on r, i, d and P?

Does offender have to be brought back to court for his/her jail component to be increased from 50% to p% where p may be up to 75%; OR is p% set at index trial and can take no account of rehabilitative progress made during incarceration?

What monitoring will there be of how the Bill's introduction impacts on sentence length for different types of offence and offender - what are the baseline data from which change will be measured? Sentencers need to specify, and database record, sentence length & initially-set p% to be served in jail; whether jail-percentage has been modified by the offender being brought back to court for that purpose & what change was made (from p% to q%). There also needs to be a mechanism for identifying associated fatalities and other serious further offences (SFO - eg of violent or sexual nature) committed during the period on licence so that SFO-rate per 1,000 offender years on licence can be related to sentencing pattern.

More generally, new provisions would be better tested-out formally than imposed. Court-based randomisation would allow like-with-like comparison of sentencing patterns & SFO-rates under conventional versus new provisions. Major changes are proposed without a robust evidence-base for their actual efficacy, cost, and cost-effectiveness. Judges deserve to be better served, and likewise the public and offenders themselves.

SUBMISSION FROM THE BRITISH ASSOCIATION FOR SHOOTING AND CONSERVATION

Introduction

Part 3 of this Bill is of direct interest to BASC (Scotland) as it is likely to directly affect the interests of our 109 trade members and 10,000 individual members in Scotland. It may also affect a number of our 676 trade members throughout the UK as well as our total membership of 123,000 individuals, 50% of whom shoot in Scotland at some point in the year. We are therefore in a position to reflect the concerns of both retailers and users of non-domestic knives.

Whilst we would wish to support any initiative aimed at reducing crime, particularly violent crime, we do not believe that this Bill will serve to reduce knife crime in any significant way. Furthermore, the effects of this legislation will not be measurable in any way as any effects could be attributable to other points in the 5 point plan for reducing knife crime.

Part 3

Our main criticism of Part 3 of the Bill relates to the entirely spurious and arbitrary distinction between domestic and non-domestic knives. We accept that this definition is already enshrined in the Police, Public Order and Criminal Justice (Scotland) Act 2006, but do not feel that this alone is reason enough for further propagating this concept. It is beyond our comprehension how, given that there are no published or supporting figures readily available from any Scottish Police Force or, indeed, the Scottish Executive, it can be concluded that non-domestic knives are the chosen type of knives used in crimes. (We note the analysis referred to in Section 61 of the Policy Memorandum but have been unable to access this research or its findings.) This is also particularly confusing when one considers that some 74% of homicides are committed by friends, relatives or other acquaintances of the victim (71% of whom are under the influence of drink or drugs) (Scottish Executive Statistical Bulletin, CrJ/2005/12, Homicide in Scotland, 2004/05), presumably predominantly in a domestic setting. Further credence is given to our argument by considering that recent published research has shown that at least half of all stabbing incidents involve large, pointed, kitchen knives, prompting a call for a ban on their sale from three medical doctors. (W. Hern, W. Glazebrook, and M. Beckett, "Reducing Knife Crime," British Medical Journal 330 (2005): 1221-1222).

It is also of concern to us that many of the knives used by gamekeepers and deer stalkers, for instance, are clearly domestic knives in that they are designed for use in food preparation. It is simply obfuscation on the part of the Scottish Executive to maintain that they are dual-purpose in order to make such knives fall under the provisions of the Bill. We would further contend that many knives are used for purposes other than that which they were designed for, thus rendering this false, illogical and arbitrary system of classification void.

The issues of statistics and crime recording also need to be considered carefully to ensure that we are in fact discussing knife crime and not similar offences committed with broken bottles, screwdrivers etc. Additionally, researching this evidence has highlighted discrepancies in the recording, classification and ability to access crime reports amongst the 8 Scottish Police Forces. It is worthy of note that the Executive commented to questioning in the following way: "*At present, the only regular statistical collection which includes information on the involvement of "sharp instruments" is the homicide statistics collection".* (Personal Communication, Criminal Law Team member, Scottish Executive Justice Department) This is, clearly, an insufficient basis on which to propose restrictions on a huge selection of knives which are used in the pursuance of land and wildlife management, and food preparation, whether on a professional or recreational basis.

Whilst considering the professional status of land and wildlife managers, we would seek clarification on Section 27A (3), which states:

(3) In subsection (1), "dealer" means a person carrying on a business which consists wholly or partly of—

(a) selling;
(b) hiring;
(c) offering for sale or hire;
(d) exposing for sale or hire;
(e) lending; or
(f) giving,

to persons not acting in the course of a business or profession any article mentioned in subsection (2) (whether or not the activities mentioned in paragraphs (a) to (f) are carried out incidentally to a business which would not, apart from this section, require a knife dealer's licence).

Our interpretation of this subsection of the Bill means that it would not be an offence to deal in knives to a gamekeeper or other professional knife user without a licence. As it is widely accepted in the shooting industry that anyone who occasionally sells game or deer to cover costs is considered "semi-professional", it is therefore our interpretation that many of these people could be sold non-domestic knives by someone not holding a licence. This would clearly undermine the intention of this part of the Bill and further serves to highlight the fundamental flaws in the way this Bill is drafted.

Section 27A (4) of the Bill states:

(4) In subsection (3), "selling", in relation to an article mentioned in subsection (2)—
(a) includes—
(i) selling such an article by auction;
(ii) accepting goods or services in payment (whether in part or in full) for such an article; but
(b) does not include selling (by auction or otherwise) such an article by one person on behalf of another;
and "sale" is to be construed accordingly.

We strongly believe that it would, therefore, be a simple matter to circumvent the need for licensing totally if a dealer were simply to display stock from a supplier based outwith Scotland on a sale or return basis. They are therefore simply selling on behalf of another person and, in our opinion, outwith the licensing requirement. This is yet another major flaw in the drafting of this part of the Bill.

The despatch of items from outwith Scotland also raises another important point: that of internet and mail order sales. As the despatch from an English business would take place from outwith Scotland, there will be no licensing requirement. Part 3 of the Bill thus only serves to damage the interests of many rural Scottish businesses whilst furthering the interests of non-Scottish businesses. We would also further contend that is less than desirable to drive knife sales underground (or across the border) in this way, as there is then no face-to-face influence in deciding who to sell knives to, or indeed whether they are old enough to legally purchase such a knife.

With regards to a licensing scheme, one must consider that a single, well-respected knife distributor supplies some 357 retail stores in Scotland. There will therefore be a considerable burden on Local Authorities. Local Authorities will, in turn, have to seek to recoup costs by charging for the licenses. This simply places a financial burden on many rural Scottish businesses and puts retailers outwith Scotland at a business advantage.

The assertion in the accompanying documents to the Bill that: "any costs associated arising from the swords and knives provisions of this Bill for the courts, prison service or police are likely to be balanced by a reduction in costs for dealing with weapon carrying offences" and that "… licences only apply to those selling to the public …. Apply only at the final stage in the chain between manufacturer and consumer. This reduces the impact on business." are, in our opinion, fundamentally flawed. There is no evidence to suggest that fewer people will carry knives – surely the logical conclusion is that, if people are currently using non-domestic knives in crime (which has still to be reliably demonstrated), they will simply switch to using widely available domestic knives. In this context, it is worthy of note that there is no traceability of knives sold under the proposed scheme – there is nothing to stop an individual, having purchased a non-domestic knife, selling the knife on. Industry figures reveal that some 40% of knives are sold as gifts, so the ultimate recipient would remain unknown to the licensed retailer and the authorities.

We are also deeply concerned over the flexibility and discretion that will be afforded to Local Authorities in relation to the operation of any licensing scheme. There could be conditions applied which constructively prevent the trade in non-domestic knives as they would be prohibitively expensive. Such flexibility also renders compliance more difficult as it is impossible for representative organisations such as ourselves to offer guidance to trade members that would be applicable to the whole of Scotland. There are also specific issues in relation to our industry, particularly with regard to those traders who attend game and country fairs across Scotland. Who would be responsible for licensing them and would they have to apply to the Local Authority where the event is being held, even though they may already hold a licence from another Authority?

There is no correlation between non-domestic knives, even those exempt from licensing, and lethality or danger. Research has shown that a blade of less than 3 inches can inflict a fatal wound, and that the "ideal" weapon is an approximately 7cm long, stiff-bladed knife such as a paring or vegetable knife. (M.A. Green, "Stab Wound Dynamics: A Recording Technique for Use in Medico-

Legal Investigations," Journal Forensic Science Society 18, nos. 3 and 4 (1978): 161-163). Such "ideal" weapons clearly fall outwith the scope of this legislation and will remain available on any High Street at a cost of just a few pounds.

The fact that licensing proposals do not differentiate between knives and swords (which are clearly designed for different purposes) means that the Bill is not fit for purpose, as such blanket descriptions of items are rarely helpful. Indeed, were it the intention of the Scottish Executive to seriously reduce knife crime in Scotland, it would seem logical to licence the sellers of all knives, thus affecting the availability of any edged weapon for criminal purposes. It would be a grave error of judgement, which would serve to undermine the credibility of the devolved administration in Scotland, if the measures before us were introduced purely for reasons of political expediency.

We believe that this submission demonstrates that the proposals in Part 3 of the Bill will not further the reduction of knife crime and are based on flawed perceptions of the dangers and a lack of understanding of the problem. All that these provisions serve to do is to adversely affect rural businesses in Scotland to the advantage of English or foreign counterparts. Indeed, the effects will be far more wide-ranging, requiring the licensing of every garden centre, DIY store and many multiple retailers in Scotland who would wish to continue to sell any non-domestic knife. Simply adding further restrictions to our already robust legislation in relation to knives will not reduce crime in the way that education and enforcement of existing legislation could.

SUBMISSION FROM BRITISH KENDO ASSOCIATION

The British Kendo Association [BKA] has a great deal of sympathy with the views expressed in this Bill, but some concerns with the way in which it is couched. It is recognised that there is a problem with the current 'knife culture' that seems to be prevalent in certain groups, and there is no doubt that Japanese swords may have featured in some incidents. The BKA deplores such use of the weapons. Unfortunately the words 'Samurai Sword' makes a good headline in the press. If figures were to be examined, it would be seen that simple kitchen knives have been used more often in knife crime for the simple reason that they are easier to carry and conceal than a sword, bayonet or machete. They are also easily obtained!

It would be true to say that comparatively cheap, usually European made, 'Japanese' swords are more likely to be used in crime than the genuine article. A sword used in Iaido by BKA members [the art of drawing, cutting with and sheathing the sword, often compared to sword dressage] is made by traditional Japanese sword making techniques, and would cost between £1500 and £3500, depending on quality and size. Such a sword is known as a 'Shinken'. The BKA has long been concerned that new members turn up with a cheap imitation which can break with disastrous results, and feels that it is the availability of these imitations that needs to be addressed and controlled. We welcome the suggestion of licensing those who have a genuine reason to use Japanese swords, or even the licensing of the swords themselves, as takes place in Japan.

In the BKA we already recommend that members carry Shinken in a locked container, in the car boot when transporting their sword to and from practice. In fact we also recommend that 'Shinai' [bamboo swords] and 'Bokken' [wooden practice swords] are carried in a bag in the boot. It is further suggested that members carry their BKA membership documents with them thereby being able to justify the reason for carrying swords.

There is an existing timetable built into the grading system that could make BKA licensing system easy to operate. A new member will practice for 12 to 18 months before reaching the grade of 1st Kyu. Three months after that 1st Dan [equivalent to black belt in other martial arts] can be taken. There is then a wait of one year before 2nd Dan and a further wait of two years before 3rd Dan. To take 4th Dan after another four. years the candidate would have to use a Shinken according to the rules of the International Kendo Federation. Thus there is no need to practice with such a weapon until a year after 3rd Dan. Until that time an Iaito [a blunt alloy practice sword] could be used. Thus even a member passing the grading examinations at the first attempt would have had a continuous training and membership of the BKA of at least five years before being permitted to use a Shinken.

Currently 591 of the BKA 1438 members practice Iaido. Of these 129 hold the grade of 3r Dan or higher, so it would be very easy to produce a register or to license those with a need to use a

Shinken. Because of the discipline insisted upon in the use of the sword, and the self discipline gained from practicing the arts within the BKA, not to mention the cost of a Shinken, there is a negligible chance of these swords being used for criminal purpose.

It is worth noting that the BKA is a leader in the art of laido in Europe. We have won 8 of the 12 Team Championships, and been bronze medallists in the other 4. There have been 13 individual European Gold medallists, 11 Silver and 16 Bronze. [There are competitions at each grade up to 6th Dan]. Six of our members hold the grade of 7thDan [8th Dan is the highest grade awarded by the International Kendo Federation.] There has not yet been a World Championship, though one is planned. We have, needless to say, great hopes at this level. For such events, contestants would have to be able to take their weapons into and out of the country.

As we have said elsewhere, the BKA would welcome a means of ensuring that Japanese swords, and other similar weapons, were subject to a proper control that allowed members to continue to practice this worthwhile martial art whilst ensuring the safety of the public

I would like to include a letter also sent to our Home Office from the Collectors point of view.

The Token Society of Great Britain

Our chief worries as collectors may be summarised, as follows:

I) That the Home office does not realise or fully understand, that the Japanese sword, which they refer to as "samurai swords", is considered as a work of fine art worldwide and important items of world heritage and culture. In this country, we have important personal and museum collections. There is no other country in the world that has a ban such as that proposed.

2) The banning of importation of these items would have a similar effect as a total ban. I showed you the Christies sale catalogue for their July sale, most of which has been imported from either Japan or USA for sale in London. A ban on importation would kill this business overnight. London's importance as a centre for art sales would suffer accordingly.

3) The swords collected by those in the UK by individuals, many of who have devoted their entire adult lives to the study and appreciation of Japanese swords as art, are totally different from the blades used in violent knife crime. To these collectors, as well as being the focus of great academic research and learning, their collections represent considerable personal investments. In the Christies catalogue previously mentioned, whilst many Lots are quite modestly estimated in the £3000-£7000 range, there are several in the £20-30,000 range and one estimated at £50-70,000! (this actually sold for over £94,000!) These prices reflect the demand in the fine art market and it is inconceivable that they could be used in street crime. (the highest price that I have seen a sword sold for in London, including buyer's premium, Vat etc., was £265,000)

4) As an example of the damage caused by an import ban, I would site one sword in my collection as an example. This blade cost me £10,000, was sent to Japan for restoration, which cost me a further £3,000 approximately. This included receiving a certificate issued by a Japanese government cultural agency (The Japanese Art Sword Preservation Society), stating that this particular piece is *"especially worthy of preservation".* I loaned this important sword to a museum in Japan where it was exhibited in 2004. Of course, after restoration, exhibition etc. it needed to be returned to me. With an import ban, this would all have been impossible and therefore the survival of such art objects, as well as important cultural exchange, would be in great jeopardy.

5) Our collectors understand that knife or street crime needs to be controlled and reduced. However, there is no evidence of which I am aware, that ties "samurai swords" to these unsocial acts other than anecdotal evidence in the popular media, who regrettably are not expert in this art form. In many cases, genuine Japanese swords seemed to be confused with the cheap replica or fantasy swords, imported from Europe or bought on the internet. These, unlike Japanese art swords, are readily available in gift shops around the country for a few pounds. To effectively ban our collecting because of such shoddy imitation goods, the sale of which could easily be regulated or stopped, is grossly unjust and would not make good law.

6) It has been suggested some kind of licensing might be a solution, such as registering one's collection at the local police station. Such controls may be a way forward and are well worth consideration. In Japan every sword needs a licence (rather than the owner) and a sword without a licence may be immediately confiscated and destroyed. There are, however, no restrictions on trading export or import, except for very rare swords of high cultural and historic interest. I could see such a thing working in the UK but there would be initial problems with existing collections and administration, I think.

7) Eminent policemen such as Superintendent Leach of Operation Blunt stated (14th June, BBC 1) that "swords and bayonets are not used in street crime"; rather it is small knives that are the problem. Ian Johnson, chair of the ACPO said (31st May Radio 4) that the increase in attacks involving knives is based solely on anecdotal evidence rather than hard data. It is the same media reporting than brands anything long and sharp as a "Samurai Sword".

I am sorry that the above is a bit long-winded and I hope that you have read this far! I think the above are our main concerns right now and I know that certain martial art groups are explaining their benefits to society, such as teaching respect for authority, humility etc. and I appreciate this argument. I am restricting myself to the Japanese ART sword case. It also seems rather weird and illogical that only Japanese swords are under consideration, no other type of sword. I hope that when you apply your solicitor's mind to the above, you will see no reason to want to ban these swords and that even if they were banned; it would have no effect on street or knife crime. Your efforts should be directed at the real problem which are the weird fantasy and combat knives as well as replica swords that are actually used in street crime. (Jack Straw, as shadow secretary in 1966 proposed a ban on combat knives but it was not implemented when he came to power. Maybe if something positive had been done then there would be less of a problem now?

Chairman Token Society.

SUBMISSION FROM BUJINKAN BRIAN DOJO (SCOTLAND)

Qualification to present evidence

We would like to state that, as an organisation, our expertise is in the use of swords in martial arts training. As an organisation and as individuals we have been involved in the teaching of traditional Japanese Swordsmanship Schools for over 20 years and are the sole representatives of our organisation (BBD) in Scotland.

Main Concerns

Sporting Organisations
We have recently had confirmed that although **sporting** organisations have been consulted we as a martial **arts** organisation have been ignored.

Organisations such as such as ours have fundamental philosophical reasons why we are not part of a sporting organisation and yet we are the ones who are most able to comment on the legitimate requirements for the use of swords.

This issue has concerned us from the outset of the announcement of the bill but despite a number of attempts to raise this matter we have not once been given an opportunity to discuss our issues with any member of the Justices Ministers Staff.

A letter received on the 6th November (i.e. yesterday) from Cathy Jamieson, Justice Minister via my MSP attempts to answer one of the questions I had put on the bill:

"As Mr Neilson notes, the sporting exception will include martial arts organised on a recognised sporting basis. My officials are discussing this matter further with representatives of Sport Scotland and groups with an interest in martial arts but our understanding is that there are martial arts activities involving the use of swords, such as Kendo which are recognised by both national and international sporting organisations"

We would like to make it clear that there is no international or national organisation that represents martial arts as a whole.

We are the only body representing our art in Scotland and we have not only not been consulted by the Justice Ministers officials but also dissuaded from correspondence when as an organisation we queried the definition of 'sporting'.

We were sent the following email after having been given standard press releases.

"I am sorry that you found my reply unsatisfactory. I have provided all the information that is in the public domain on this matter. The Bill and accompanying documents will be introduced to Parliament in 1st week of October. At that time the policy intentions of the Bill will be revealed. Until there is nothing that I can add to Minister's statement of end August."

There was no offer to discuss or make representation on this matter to any official of the Parliament.

We feel there is a fundamental misunderstanding about the way Martial arts in Scotland are organised and taught.

If this mistaken assumption is perpetuated we could find a situation developing where members of a Judo club with no interest in sword training would be considered fit and proper to own and use swords whereas my fellow instructors and I, with 20 years of training each would not.

Rights and Responsibilities
As a Marital Arts organisation hoping to be recognised as a legitimate authority on who is a valid person to own a sword what legal status, protection and obligations will we have?

Definition of a Sword
There is not yet any legal definition of a sword that we have been made aware of.

Ministerial Power
Our reading of the proposed legislation is that Scottish Ministers will, from the date of enactment of the bill, have the power to vary the legislation – we have concerns that swords will be able to be fully banned on a whim.

The key recommendation of the consultation with regard to swords has been ignored by the Scottish ministers in drafting this bill so what safeguards will there be for the promised rights of continued legitimate use?

Legal Defence
The 1988 act is structured around the concept that something is an offence and one must prove innocence using a valid Defence. This criminalises a previously law abiding section of society.

Travel with Swords
What is to be the procedure for anyone transporting a Sword to a training event overseas and returning to Scotland? This is something that we do regularly. Will that person have to provide proof of purchase and if so what is the status of:

1. Swords purchased prior to the act?
2. Swords legitimately purchased by practicing martial artists overseas?
3. Swords purchased via the Internet or mail order from companies out with Scotland?

Effectiveness
We would like to point out that in our opinion this legislation is unlikely to make any difference to violent crime as indicated by the lack of changes from the original 1988 Act on which this legislation is based.

2001 British Crime Survey

Figure 4.5 Trends in violent crime, 1981 to 2000

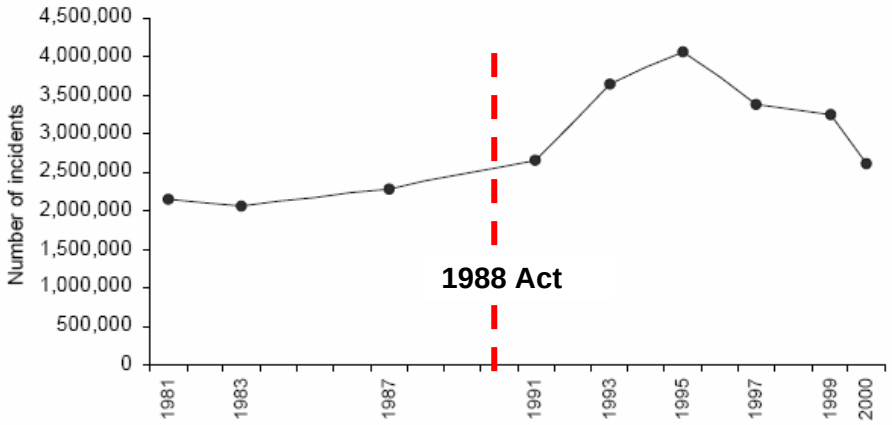


Figure 1 Source: 2001 British crime survey

Final Statement

Given all the above we would like to have the opportunity to give oral evidence as there is insufficient room for us to air our concerns and we have, as one of the most affected group of individuals, had the least say in this legislation despite many attempts to make our voice heard.

We have tried our utmost given our very limited resources as an organisation to participate in the Democratic process and have at various stages been thwarted or ignored.

We are one of the longest practicing, largest and most successful groups practicing our particular art in Europe; this legislation however has the potential to destroy over 20 years of dedicated hard work.

We look to the Justice 2 committee to give us the opportunity to state some of our concerns and ensure the legislation does not criminalise law-abiding people.

SUBMISSION FROM MR RENNIE CAMERON

I set out below my response as "written evidence submittal" in respect of two points in the subject Bill for which a reply was sought.

Reference 2

The sale of swords will be banned subject to exceptions for specified religious, cultural or sporting purposes.
As a practitioner of Japanese and Korean sword arts I uphold the view that the sale of swords should be banned, ***with exceptions***. Such swords should only be sold by those places dealing in similar weaponry and approved by the authorities.

Sport enthusiasts, sword and historical re-entactment groups together with bona fide sword collectors should be permitted to retain the privilege of ownership under some form of licencing ownership scheme.

Reference 3

The introduction of a mandatory licencing scheme for the commercial sale of swords and non domestic knives to be known as a knife dealers licence with local authorities being the licencing authority.

As previously set out in documentation provided under the Consultancy Period, a licensing scheme can easily operate for a nominal fee. This should operate on an annual basis with the sword sighted by the relevant authority office.

Summary

As a keen sword exponent, I would be delighted to make myself available for any discussion which may involve the sale/licencing of swords. I can only admit to using swords as stated above in the Japanese and Korean Martial Arts where we use both "cutting" and "practice" swords. These swords are manufactured to a high standard to meet the heavy duty use and I would be prepared to bring these under safe transit lock and key, should any of the Officials require sight of such instruments.

Should you require any additional information or sight of my Licences which are issued through my organization and previously offered to you, please do not hesitate to email or contact me.

SUBMISSION FROM MR JOHN CAMPBELL

Custodial Sentences

"Sentences of 15 days or more will have a minimum of 50% spent in custody with the remainder of the sentence being spent in on licence in the community."

While this proposition is a start, I don't think it goes far enough. The 15 day period will only affect fine defaulters and then only the lower end, £400.00 or less. The length of custody only sentences should increased to at least 1 month /30days or ideally to 3 months/90 days. The 15-day period is simply not long enough for any form of intervention/rehabilitation or deterrent to take effect.

The 1 month /30 days option includes the majority of fine defaulters and would strengthen the issuing of fines as a form of punishment to be respected. It would also tie into 4-week (minimum) period for the issue of Curfew licences.
The 3 month /90 day option would equal the 50% limit of a 6 month sentence. This would further strengthen the fines system and would allow Drug counsellors, Social Workers and others to help address offending behaviour. However, the issue of Curfew Licences (HDC) could be problematic and may have to be reconsidered.

On the subject of Curfew Licences (HDC), what is the point in having the courts give a custodial sentence when The Scottish Ministers can override the wishes of the courts and release the prisoner on a Curfew Licence? (See Section 36 subsections 2, 4, and 8.) Allowing HDC to override the wishes of the court defies logic and undermines the whole point of this bill. For example, the court gives someone a 12-month sentence and orders him or her to serve 75% (9 months). That person qualifies for a Curfew Licence after about 4.5 months (subsection 4(ii)). So in effect they could be out after 4.5 months of a 12-month sentence.

Section 22: Effect of multiple sentences
I hope there will be clarification on how consecutive and concurrent sentences will be incorporated into the new sentencing arrangements. Ideally, I would like to see concurrent sentencing done away with. Any concurrent sentence is in fact a non-sentence. It serves no purpose and is a waste of taxpayer's money. This is especially true of prisoners who are already serving a sentence and subsequently receive another sentence that is concurrent to the original one.

The downside of these propositions could be an increase in the Prison population. However, the Prison population is increasing as we speak. At least this way we may be able to do some good and help some prisoners to break the cycle of re-offending. Something this bill will not do in its current form.

Weapons

From the Policy memorandum

"90. Section 27A(2) provides that the section applies to knives, knife blades, swords or other bladed or pointed articles designed or adapted for causing injury (e.g. arrows or crossbow bolts). Knives and knife blades designed for domestic use are excluded. Section 27A(6) allows the list of articles covered by the to be altered by an order made by Scottish Minister."

I am still furious about this, at no time was there any indication that arrows or crossbow bolts were to be included. The consultation was about knife crime, knives and swords. Not arrows or bolts. Slipping this "through the back door" has denied Archery Organisations and Archers the opportunity to respond. This is unfair and undemocratic. As far as I am aware, there is not any specific law covering bows and arrows, but I do know that crossbows and all associated items are covered by the 1987 Crossbow act. So why is the Executive doubling up on legislation and why is behaving in such an underhanded way?

A point to note, anything can be "adapted for causing injury" not just bladed or pointed articles. Why are domestic items excluded, they are more widespread and easier to get hold of? Won't this Bill result in domestic knives being used more and more? This Bill blames the item but fails recognise that it is the intent of the person that causes the damage to our society.

Defences for sword ownership.

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

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

I am pleased that there will be defences for the owning of swords, however I have some concerns mainly revolving around proof of defence. For example, what proof is required to purchase a sword? How will this information be stored? Who will have access to it? Am I required to have proof of defence on me at all times? All these questions are important as one my defences is based on religion.

I am a Pagan and the ownership and use of a sword is very important in the expression of my spirituality. Pagans are not alone with regarding the sword (or other blades, be it an Anthame, Boline or Sickle) as an important part of their religion. As you quite rightly state swords have particular significance to Sikhs as well. According a breakdown of the 2001 Census, Paganism is the 7th largest religion in Scotland and Sikhs are the 4th largest. Together we represent the 3rd largest religious body in Scotland, yet our right to purchase/make, carry and use items of religious significance (i.e. swords or other bladed items) will be subject to state control.
We will have to provide proof of faith and carry that proof with us if we are not to be considered a criminal. Something other religions in Scotland will not have to do. Providing proof may be easier for the Sikh community but for Pagans this could be extremely problematic as only a small percentage of the Pagan community are members of the Pagan Federation (Scotland). Finally, we will have to provide ID, have our names, addresses and reasons for purchase recorded. Thus having our religious anonymity removed. This is a disappointing situation to find ones self in, especially a country that prides itself on its democratic credentials and tolerance to minorities.

In conclusion, I fear this bill will not live up to its expectations. It will not make any constructive changes to the current sentencing arrangements; in fact it will most likely complicate things

needlessly for little gain. I predict that the courts and the general public will be bitterly disappointed when they realise that the new sentencing powers will amount to nothing due to HDC.
The restrictions placed on the dealers, manufacturers and owners of swords and non-domestic knives will only impact on law-abiding people. It will not deter criminals, who by their nature do not heed the law of the land. Finally, this bill will with most likely make swords and non-domestic knives more attractive to criminally inclined young men for no other reason than they more difficult to get. Banning something will not stop the criminally inclined from using or wanting it.

SUBMISSION FROM ANDREW COYLE, PROFESSOR OF PRISON STUDIES, KING'S COLLEGE LONDON

I am Professor of Prison Studies in King's College, University of London. Between 1973 and 1991 I was a Governor in the Scottish Prison Service, where I governed Greenock, Peterhead and Shotts Prisons. Between 1991 and 1997 I was Governor of Brixton Prison in London. From 1997 until 2005 I was Director of the International Centre for Prison Studies in the School of Law in King's College London. I am a member of the National Advisory Body on Offender Management.

I have been asked to provide a short written submission on the custodial sentences aspects of the Custodial Sentences and Weapons (Scotland) Bill Custodial Sentences and Weapons (Scotland) Bill to assist the Justice 2 Committee in its scrutiny of the Bill. Specifically, I have been asked to comment on the extent to which I consider that the provisions in this Bill will achieve their expressed purposes, particularly in connection with reducing re-offending and better protecting the public.

Imprisonment and public safety

Official records show that crime rates in Scotland have been falling consistently for a number of years. These include serious crimes, such as murder, non-sexual violence and house-breaking. The rate of 'offences' has shown an increase in recent years. The term 'offences' is applied to illegal actions connected with motoring, low-level assaults and breaches of the peace. This increase can be explained mainly by a significant increase (by two thirds in the year 2003) in the number of detected offences of speeding, due to the installation of speed cameras.

In general terms Scotland is a much safer place in 2006 than it has been for many years. The question as to whether the public feels safer is another matter and is beyond the scope of this short paper.

Despite the clear fall in crime rates the number of persons in prison in Scotland has risen inexorably in recent years. It now stands at almost 8,000, 20% higher than it was ten years ago and the highest it has ever been. The Scottish Executive predicts a continuing rise in the number of people in prison and has plans to provide two new prisons, with around 1,400 places within the next few years. As in other countries, there is little research evidence to suggest any link between crime rates and imprisonment rates.

In international terms, Scotland has the third highest rate of imprisonment in Western Europe. If the predicted increases occur, it will have the highest rate. Rates of imprisonment are usually quoted per 100,000 of the total population. It has been suggested that they should instead be quoted per rate of crime and that, if this were done, Scotland would have a relatively low rate of imprisonment. This suggestion does not bear scrutiny. It is notoriously difficult to compare rates of crime across countries because of different legal definitions of crime and different methods of collecting data. The most reliable international data in this field is provided by the International Crime Victims Survey. The latest available figures for this indicate that Scotland is in 8th place out of 17 countries for burglary and attempted burglary and 4th out of 17 for violent crime.

The high rate of imprisonment in Scotland comes at a cost. The annual cost to the tax payer of the Scottish Prison Service (SPS) for year 2005-06 was £280 million. In response to a recent Parliamentary question the Minister for Justice reported that the Chief executive of the SPS estimated that the contract value of the new prison at Addiewell would be "£369 million in Net Present Value terms". I am advised that in real terms this will mean a cost to the public purse of around £1 billion over 25 years.

None of the above figures take any account of the implications of the likely outcome of the proposals in the Custodial Sentences and Weapons (Scotland) Bill. One estimate is that the provisions in the Bill may lead to an increase in the daily prison population of about 1,000. This will be in addition to any other projected increase.

If it could be shown that an increase of this size might result in Scotland being an even safer country than it is today, then it might be possible to make an argument for such a way forward, whatever its cost in financial and social terms. It is for the Justice 2 Committee to decide whether any evidence to this effect has been provided.

The aim of the Custodial Sentences and Weapons (Scotland) Bill

The Scottish Parliament Information Centre's briefing for this Bill indicates that it "aims to deliver the Scottish Executive's commitments to end automatic and unconditional early release of offenders and to achieve greater clarity in sentencing".

For many years only a minority of prisoners have served the full sentence of imprisonment passed on them by the court. In the UK there are three main grounds for release before the end of sentence. They are automatic release, generally known as remission, discretionary or conditional release, usually known as parole, and home detention curfew, a relatively recent innovation.

The practice of remitting part of a sentence of imprisonment dates from the time of transportation, when convicts who had been of good behaviour were given a ticket of leave from their sentence. Good behaviour was calculated by a system of marks, which entitled a convict to a set number of days of remission according to his behaviour. This system was in due course applied to those convicts who served their sentences in the United Kingdom and by the end of the 19th century it was applied to all sentenced prisoners. Throughout the course of the 20th century there were several increases in the proportion of sentence that was remitted, from one sixth to one quarter, to one third and currently to one half for all sentences of less than four years.

The parole system, conditional or discretionary release under supervision, came into operation in 1968 and applied to all prisoners serving determinate sentences who became eligible for release on licence after serving one third of their sentence or twelve months, whichever was the longer. In practice, this meant that parole applied to prisoners serving over 18 months. In 1991 the threshold for parole was raised to include prisoners serving sentences of four years or more. These prisoners became eligible to apply for conditional release on licence for the period between half and two thirds of their sentence.

For the last fifty or so years there has been a presumption that all prisoners would be given remission unless their bad behaviour in prison warranted that some of it should be removed. The increases in the rate of remission were usually a response to concern about the increasing prison population. Similarly, the introduction of parole was largely a pragmatic response by government to the need to manage the size of the prison population, although it was also related to a belief that the rehabilitation of prisoners could be aided by early release, coupled with support in the period immediately thereafter.

The system which exists today is complex and difficult to understand, even by "experts" in the system, be they judges, prisoners or those who operate the system. Above all, the public, including victims, find it very confusing. The aim of the present Bill "to achieve greater clarity in sentencing" is admirable. However, it is not immediately apparent that the Bill will achieve its aim. Even when approaching it in a positive manner one needs a calculator and a great deal of patience to unravel the arithmetic of what a prison sentence will mean in the future. In the world of criminal justice, experience teaches one to be wary when words are given a new meaning. The current Bill introduces one such innovation with the term "community prisoner" (Section 4). This is not a term which will be easily understood by the public.

Everyone, the public, victims, judges and offenders, will be better served if there is greater clarity in sentencing. Currently, if a sheriff passes a sentence of six months imprisonment, he or she is well aware that this means that the guilty person will spend three months in custody. It is sometimes

suggested that if the sheriff decides that a particular offence merits three months in prison then he or she will pass a sentence of six months. Judges should not do this and all will deny that this ever happens. However, common sense suggests otherwise. None of this is clear to the victim or the person in the public gallery. He or she will expect that a sentence of six months in prison means just that and, therefore, is likely to be surprised to see the guilty person walking the streets after six months. An important consideration when discussing clarity in sentencing is whether, for the offence described above, the clear sentence passed by the judge should be three months or six months. If it is to be three months, there will have to be a process of public education to explain that this does not imply greater leniency on the part of the court (also allowing for the fact that prison sentences in Scotland are generally longer than those for similar offences in comparable European countries). If, on the other hand, it is in future to be six months, this will mean in crude terms a doubling of the already high number of persons in prison in Scotland. The current Bill tries to deal with this dilemma by a process of realignment of the amount of sentence to be spent in prison. History does not suggest that this will be successful. There are sentencing models currently operating in other Northern European countries which would be well worthy of study.

Reducing re-offending and protecting the public

This short paper is not the place to embark on a long discussion about the purposes of imprisonment. Suffice to note that the main consideration for the judge dealing with an offender in the dock, conscious of the victim who may be in the public gallery, should be to ensure that the sentence he or she passes is commensurate with the crime that has been committed and that, if a prison sentence has to be imposed, its length should be proportionate.

The reality is that the likelihood that a guilty person will not re-offend in the future is reduced when he or she is sent to prison. Levels of recidivism of released prisoners around the world demonstrate this fact. That is not to say that the prison authorities and other agencies should not do every possible to minimise the damage done by imprisonment and to increase the possibility that after release from prison formerly incarcerated persons should lead a useful and law abiding life. In order to achieve this, there has to be close collaboration between the Prison Service and the agencies which will have dealings with the offender after release. These latter will include the Social Work Department Criminal Justice workers, as well as those responsible for housing, for employment, for health and other community agencies. The Scottish Executive has recognised this reality by setting up Community Justice Authorities under the Management of Offenders legislation recently enacted by Parliament. This legislation places Scotland at the cutting edge of dealing with the problem of crime as it affects communities. It would be a pity if the work of these new authorities were to be made more difficult by some of the provisions in this Bill. Not least among these, as explained by a number of those who have already provided submissions to the Committee, is the fact that the total number of released prisoners to be dealt with by criminal justice social workers and others will increase significantly.

One of the aims of the Bill is to ensure proper supervision of those offenders who present a serious threat to public safety and security. This is also an objective of the recently established Risk Management Authority. An unforeseen and unfortunate consequence of the Bill may be that by widening the net of supervision to include many low level offenders the supervision given to the relatively small number of released persons who will continue to be a serious threat to public safety will be reduced and the danger that they may re-offend will be increased.

SUBMISSION FROM CROWN OFFICE AND THE PROCURATOR FISCAL SERVICE

COPFS is grateful to the Justice 2 Committee for the opportunity to comment on the Custodial Sentences and Weapons (Scotland) Bill. Our officials have been working closely with colleagues in Justice Department in the preparatory phase and our views are reflected in both the Policy and Financial Memoranda.

Since Justice Department have policy responsibility for this Bill, we do not offer comment on its general principles although we would, of course, be happy to address any specific question the Committee may have for COPFS arising from its deliberations. COPFS will continue to work closely with Justice Department colleagues as the Bill progresses, offering advice on the practical application of the Bill's provisions as they relate to both custodial sentences and weapons.

COPFS is represented on the Custodial Sentences Planning Group which is responsible for managing progress on policy delivery to secure early and effective implementation of the new sentencing provisions. Since breach of licence during the community part of a sentence is to result in recall to prison rather than prosecution of new, these provisions have a restricted impact on COPFS, but we will contribute to the agreement of implementation pathways, timings and interdependencies and help identify how the policy will be delivered in practice with our criminal justice partners. COPFS has an interest in any rise in sentence appeals that may result from the imposition of a more than minimum custody part of a sentence. We will monitor sentencing practice and its consequences carefully in this regard.

COPFS officials are also working closely with Justice colleagues on the offence provisions associated with the licensing scheme for the commercial sale of swords and non-domestic knives.

SUBMISSION FROM MR ROBERT EDMINSON

Representation on Part 3 of the Custodial Sentences and Weapons (Scotland) Bill.

I collect and deal in antique firearms and militaria including bayonets. I trade at three arms fairs in England and sell about 12 bayonets a year.

The use of 'composite' bills is lazy legislation the subjects covered by this bill should have separate bills.

The proposals in Part 3 covering the Licensing of knife dealers are a waste of time and a misdirection of effort, placing unnecessary burdens on Trading Standards staff.

Paragraph 66 of the Briefing Note states "A wide range of powers is now in force and there is a range of penalties available to the court, including fines and imprisonment." It then lists FIVE Acts of Parliament. **It must follow that what is needed is the proper USE of legislation i.e. it's enforcement NOT more legislation**.

Paragraph 80 of the Briefing Notes goes on to trumpet the recent knife amnesty. 12,500 weapons were handed in. If we assume that there are two million households in Scotland each with two knives that gives a **0.003% reduction in the number of knives available**. It is obvious that the real percentage is even lower. This just proves how little value there is in gesture politics which is all this licensing proposal is.

Section 27B Applications for knife dealers licences: notice
Giving public notice of every application is a thieves' charter. This should be dropped.

Section 27C (1) (b) & (c) Knife dealers licences: conditions
To allow licensing authorities to add conditions will lead to over complication and could place dealers in some areas at a competitive disadvantage. Never mind the cost of this licence which in Edinburgh will be over £100.00.
Paragraph 114 of the Briefing notes gives examples of the various steps local authorities could add to costs by specifying CCTV etc. The final point is ridiculous in giving local authorities the power to dictate the packing used in mail order transactions. Surely this is for the Royal Mail to specify and enforce?

Section 27J (3) (b) Forfeiture Orders.
This gives a court unlimited powers of forfeiture, where is the right of appeal?

Section 27N Remote Sale of knives etc.
I store my bayonets in Edinburgh.
I only sell them at a trade fair in England. I trust that I will NOT require a licence?
Should I advertise them on the internet as 'Only for sale to Customers outside Scotland' and mail them to destinations OUTSIDE Scotland from a Post Office in Scotland it appears that I need a licence and to incur the costs that will entail.

Should I take them to Berwick upon Tweed and post them from there am I correct in assuming I do not need a licence?

What is to stop anyone ordering knives and swords from suppliers in the rest of the U.K. and having them posted to Scotland? If the answer is nothing then I what is the point of the licensing scheme, except to waste time and money and to make the Justice Minister look as if she is doing something.

Section 27R Orders under sections 27A to 27Q
The conferring of powers by Statutory Instrument is an abuse of democracy and should be limited by elected politicians. This Bill hands far too much power to ministers. The need for such wide ranging powers is an illustration of how badly drafted this Bill is. In that in effect it is saying 'We know we have not thought this through and will have to come back and change it'. **The Committee should reject this sloppy approach and send the Bill back for proper drafting**.

Section 45 Sale etc. of Weapons
Again this allows Ministers to use Statutory Instrument to vary offences and exemptions and again Parliament is meant to 'write a Blank Cheque' to allow Ministers to do what they like. **The Committee should reject this sloppy approach and send the Bill back for proper drafting**

Section 46 Sale etc. of swords
This is a British Pattern 1907 Bayonet. The blade is 17inches long and the overall length is 21 inches. **Is it a sword?** (For Information this is valued at about £150.00)

Where is the definition of a sword?
I ask as I deal in bayonets and some of the older ones are of a length of a short sword are these to be dealt with as knives or swords?
Until a workable definition of a sword is produced no further progress should be made with this bill.

Paragraph 94 of the Briefing Notes states that 'The ban on the sale of swords will be implemented by using the powers in existing legislation modified by the Bill.' It goes on to state that it will be an offence to sell swords (subject to certain defences which will allow swords to be sold for specified approved purposes) **This is not a BAN it is a restriction. The Bill should be reworded to make it clear that the sale of swords is RESTRICTED to specific purposes and these should be included in the Bill and NOT subject to promised exemptions by Statutory Instrument.**

I cannot help thinking that reason for the convoluted form of wording is so that Ms Jamieson can score a cheap political point by saying she's BANNED something!

Criminal Justice Act 1988 (c33)
Section 141ZA Application of section 141 to swords: further provision
Throughout this section there is reference to 'The Scottish Ministers may'
They may add items to the section, they may provide for defences to offences, they may increase penalties, they may create offences, and they may grant or revoke permissions.

Ministers must be told to come clean and say what they are going to include in this section and what exemptions there are to be. Are Antiques swords to be allowed? Are 'bone fide' collectors to be allowed to buy and hold swords? If so how are they to be defined? If knife crime or sword crimes do not fall can the Ministers come back in two or three years time and say that Antiques are no longer excepted and collectors will have to hand in all their swords ?

In Paragraph 109 of the Explanatory Notes it states that ***Section 141 (1) of the 1988*** Act prohibits the importation of the weapons listed. **Is it the intention of *Section 141 ZA* to prohibit the importation of swords to Scotland?** If so is there a proposal to do the same in the rest of the U.K? To have two sets of import rules for different parts of the U.K. would be ridiculous and would lead to all sorts of anomalies.

Paragraph 101 of the Briefing Notes extends the term Antique to the end of the Second World War and if this exemption covered bayonets it shows some common sense. Provided that there really is an exemption for antiques and Parliament does not just blindly accept the Ministers assurance that she or he *MAY* provide one.

In view of the increase in bureaucracy and costs of the licence, at least £100.00 in my case surely there is a case for exempting small traders, with say a turnover of under £1000.00 from this scheme, or to exempt those who deal in antiques.

Finally may I ask you all to read 'Knife Crime Ineffective Reactions to a Distracting Problem' by C Eades.
http://www.kcl.ac.uk/depsta/rel/ccjs/knife-crime-2006.pdf

And remember
'As long as there is un-sliced bread opportunities for knife crime exist.' C. Eades.

Reject Part 3 of this Bill.

SUBMISSION FROM FACULTY OF ADVOCATES CRIMINAL BAR ASSOCIATION

I am writing to you in response to your letter of 10th October 2006 to the Dean of Faculty seeking submissions in respect of the above.

As Chair of the Faculty of Advocates Criminal bar Association, your letter has been given to me to provide a response.

Today is the last day for submissions, just short of one month from your request. I regret to advise the Committee that we cannot provide a proper or detailed response to a bill which contains some 50 provisions within that timescale.

I would only add that in very general terms we welcome the regulation of the position and increased transparency in respect of the release of prisoners and the supervision of same remaining with the Parole Board.

SUBMISSION FROM CHARLIE GORDON MSP

I welcome the opportunity to comment on the above draft Bill.

I support the general principles of the Bill.

- I strongly support the key provisions proposed by the Scottish Executive within the ambit of the Bill in relation to controls and sanctions on, among other things, the inappropriate use of knives and swords.

- Sentences of less than 15 days to be spent entirely in custody.

- Sentences of 15 days or more to provide for at least 50% of the sentence to be spent in custody, with the remainder of the sentence to be spent On Licence in the community.

- Courts to have the power to increase the custody part of a sentence up to 75%.

- At the end of the period of custody, and after a risk assessment, any offenders still considered to be a risk may be referred to the Parole Board.

- A ban on the sale of swords, except for specified religious, cultural or sporting purposes.

- The introduction of a mandatory licensing scheme for the commercial sale of swords and non domestic knives, to be known as a Dealer's Knife Licence, with local authorities being the licensing authorities.

I support all the above because there is plenty of evidence of the extent of knife possession and misuse in the official crime figures.

I also support it because there is anecdotal evidence that many young people regard it as alright to carry a knife for "protection". This attitude demonstrates not only an ignorance of the illegality and dangers of knife possession, but the underlying fear which drives the issue.

It is not only young people who fear knife crime; hundreds of my constituents have signed my petition on the issue.

I urge the Committee to support the above measures as steps forward in our essential response to what is a major challenge to us all.

SUBMISSION FROM THE GUN TRADE ASSOCIATION LTD

General

This submission is, as required, concerned with the general principles of the Bill. This Association has noted many matters of detail in the wording of the Bill upon which it will seek permission to make further submission at subsequent stages of the Committee's scrutiny.

The Bill seeks to reduce the use of bladed or pointed instruments in crime in Scotland by creating a series of prohibitions and a system of licensing those who sell such items by way of business. In doing so, it will impact on many legitimate users of such items to whom reference is made in publicity connected with the Bill. It has a significant measure of support but both the Bill and the support it has received appear to be based on misconceptions that could and should have been remedied before the bill was presented.

Severance of Part 3 of the Bill

Measures relating to weapons form a small part of a larger Bill concerned with custodial sentences. This system of incorporating contentious measures in a complex Bill has grown at Westminster where it has invariably led to a concentration on the major aspects of a Bill to the neglect of matters that may be vital to a minority of the population. The system also leads to rushing through measures that are unsatisfactory so that the Bill as a whole is not delayed or lost.

It is seen as extremely unfortunate that this system should have been adopted in Edinburgh. A complex topic such as the effectiveness of measures to control a particular form of crime demands a vehicle designed precisely for the particular purpose of bringing all aspects of that branch of the law into consideration, resulting in simpler and more easily understood legislation. If the very different parts of the Bill are severed one from the other they will be able to proceed through Parliament at different times and at a different pace, allowing for proper research and debate on one part without compromising the passage of the other part.

It is submitted that Part 3 of the Bill should be severed from the major parts.

Practicality

The Bill seeks to impose a licensing system on the sale (etc) of certain knives. Questions of interpretation will arise in respect of the definitions that are suggested, but these may not be matters for consideration at Stage One of the Committee's scrutiny. There is, however, the

question of whether or not the Bill can work, given that it applies only to Scotland and that no similar measures are in place in the remainder of the United Kingdom, within the European Union or elsewhere.

The Bill does not propose to penalise acquisition or possession. A person residing in Scotland will be able to buy a knife of any sort by simply crossing the border, or by mail order. Dealers in other countries will arrange to provide catalogues and to fill the demand by mail order. The net effect will be to penalise Scottish traders whilst improving the business of traders in other countries.

Scotland cannot be considered in isolation in measures such as this.

Lack of Targeting

There has been wide-ranging consultation in this case, but those who were consulting and those who were consulted have been reaching conclusions without the necessary evidence.

The Bill is designed to provide a part of an answer to a problem that no one would claim is less than serious, but the problem itself has not been researched or defined. Not only does this make it impossible to provide the answer, it also makes it impossible to measure the effectiveness of the Bill after its implementation.

Statistics produced in June 2005 show that between 1998 and 2003, "knives" (in fact any bladed or pointed instrument) were used in between 40.9% and 53% (average 48%). of homicides in Scotland.

Scotland is by no means unique in having sharp instruments at the top of the list of methods of killing. Over a long period sharp instruments have been the favoured homicide weapon in England and Wales though accounting for a smaller proportion of the homicides. In 2003/04 sharp instruments accounted for 237 (28%) of the 833 homicides, but firearms accounted for 73 cases against a total of just 2 in Scotland.

A high proportion of homicides in all areas is domestic in nature with a close relationship between victim and offender. A good deal of research has been conducted into the availability of weaponry as a cause of homicide and into the 'substitute weapon' theory. If a large proportion of the knife crime in Scotland is domestic crime committed within the home, the presence or absence of non-domestic knives can hardly be a factor since domestic knives, and indeed a wide range of other weapons, will be readily available.

Furthermore, if a domestic situation has developed to the point at which one of the parties wishes to, or is willing to mount a potentially lethal assault on the other, the choice of weapon will depend more on what is within reach than on the design or potential lethality of the weapon that was actually used.

Homicide statistics, as presented in the original documentation accompanying this Bill, do not provide a basis for logical legislation but some of the material may provide a strong indication of the nature of the real problem which is capable of being tackled more directly.

Evidence from Strathclyde shows that the age of offenders peaked at 17 and fell of rapidly from 24 years to become very low with mature offenders. Those aged 17 were 2.5 times more likely to be involved in the use of knives than those at 27 and 5 times more likely than those at 37.

This points to a peculiar problem with young people and to the fact that mature people, who form the basis of legitimate users such as sportsmen and collectors, generate a very low risk.

That evidence *suggests* (but does not prove) that the major part of the problem was identified by the Justice Minister in her foreword to the consultation process as 'the booze and blades culture'. Assuming this to be so, the presence or absence of non-domestic knives on the market would be an irrelevance if those involved in that culture believe that they need to carry a knife for protection against others in the culture. If they are denied access to non-domestic knife, it is surely wishful thinking to assume that they will be even inconvenienced by simply walking into the kitchen of any

home and taking a knife that is just as effective as anything that might be called a non-domestic knife. Similarly, a few minutes work will convert something like a Phillips screwdriver into a very lethal weapon or allow the resurgence of a weapon that was common in the past, razor blades stitched into the peak of a cap.

Before any legislation is enacted in this field, there is an urgent need to commission research, which could be relatively small in scale. Homicide might be seen as the tip of the iceberg with the bulk of knife crime being assaults of varying degree. A study of homicides in two disparate police areas of Scotland such as Strathclyde and Northern Constabulary and covering just two years would be sufficient to clearly identify the problem and allow legislation to be very specifically targeted with resources concentrated on an identified problem.

Research would seek to identify (a) the types of knife used; (b) the availability of substitute weapons; (c) the age of the offender; (d) what the offender was doing at the time; (e) the location – whether on domestic premises or in public; (f) whether the knife was carried by design or whether it happened to be to hand; (g) any evidence of habitual knife carrying; (h) any evidence of gang, drug, drink, or crime connections; (i) the source of the knife.

Uncertainty of Law

The Bill grants Ministers extensive Rule-making powers and the real effect of this legislation cannot be determined from the face of the Bill. Documents accompanying the Bill indicate areas in which exemptions *may* be made, but once the Bill is law, the present Minister will not be bound by those documents and certainly any successor in office cannot be bound by them. There is, for example in Clause 27A (6) (a) a power for Ministers, by way of Rules, to add or amend descriptions of articles or classes of articles; to specify conditions to be imposed on licences, to make exceptions to various provisions of the Bill. In Clause 46 the application of the Criminal Justice Act to swords is subject to a very wide range of rule making powers which will change entirely the effect of the Bill.

Whilst some rule-making power may be seen as necessary, the effect in this instance is to create a situation in which the Parliament will not know what it is banning and what will be allowed. Further the entire body of this law, including the Bill and secondary legislation will be enormous with the volume of Rules far exceeding the primary legislation.

Those to whom the law will apply are entitled to some certainty when the Bill proceeds through Parliament and as many as possible of the exceptions envisaged should be specified on the face of the Bill and not subject to rapid change at the whim of some future Minister.

Rules are subject to annulment by Parliament, but they cannot be amended. The fact is that Rules are virtually never annulled by Parliament, either in Westminster or Edinburgh.

Sword Provisions

Clause 43 adds Section 27A to the provisions of the Civic Government (Scotland) Act 1982, and penalises the selling, hiring, offering for sale or hire, exposing for sale or hire, lending or giving of swords by a person carrying on a business unless that person obtains a knife dealer's licence. In addition, Clause 46 of the Bill applies the provisions of Section 141 of the Criminal Justice Act 1988 to swords, making it an offence to "manufacture, sell or hire or offer for sale or hire, exposes or has in his possession for the purpose of sale or hire, or lends or gives to any other person, a weapon to which the section applies."

Perhaps more than elsewhere in the United Kingdom, swords are an important part of the Scottish heritage and are extremely popular with collectors who, it has been noted, fall into an age group not associated with misuse of sharp instruments. This Bill makes the transfer of a sword infinitely more difficult than the transfer of any other bladed weapon.

There is no definition of a sword on the face of the Bill and this raises at once the question of bayonets which are popularly collected along with the associated firearms and which may have the appearance of a sword in most respects.

The policy memorandum published with the Bill makes clear the fact that there is no evidence, other than anecdote or opinion, about the extent of illegal sword use. Certainly swords cannot fall into the 'blade and booze' syndrome referred to above since they cannot be concealed. That there have been very rare instances of misuse of swords could not be denied, but it would be impossible to identify any item that might be used to cause harm that has not been used at some time. Items that remain unregulated, such as large kitchen knives, are infinitely more likely to be misused.

There is a stated intention to make a very wide range of exemptions to Section 141, creating a massive bureaucracy and a complexity of law that will be almost impossible to unravel. One such suggested exemption may relate to collectable swords, but not to reproductions of those swords which often fill an important gap in collections.

None of the exemptions appear on the face of the Bill and they will be entirely at the discretion of current Ministers or their successors in office. Undertakings made by current holders of office cannot be binding on their successors. Parliament is being asked to give Ministers a blank cheque in this respect.

When compared with other provisions of the Bill, the extra provisions relating to swords are draconian and based on no sustainable evidence. They should be removed from the Bill.

Summary

The Gun Trade Association invites the Justice 2 Committee of the Scottish Parliament to conclude that:

1. Part 3 of the Bill is of a different character to other provisions and should be severed from the Bill so that it can proceed through Parliament at a different pace if necessary.

2. The Bill is unworkable. If passed in its present form it would penalise Scottish trade, but those requiring knives of any type could acquire them outside the borders of Scotland, either personally or by mail order.

3. The Bill has not been targeted at an identified problem and available research is not helpful. Research should be commissioned into homicides involving sharp weapons to establish more precisely the problem which is addressed.

4. The Rule-making powers are far too wide-ranging and add to the uncertainty about the final shape of the law as created by primary and secondary legislation.

5. The additional provisions relating to swords are unsustainable and should be removed from the Bill.

SUBMISSION FROM ROGER HOUCHIN, CENTRE FOR THE STUDY OF VIOLENCE, GLASGOW CALEDONIAN UNIVERSITY, 13 DECEMBER 2006

Thank you for the invitation to comment on the legislative proposals. I apologise for the late submission. I received the invitation as I was leaving for a piece of work abroad. This is the first opportunity I have had to put my comments on paper.

I would like to comment on the Part 2 of the Bill only, though, inevitably those comments make an oblique reference to the somewhat changed status of the Parole Board that the Bill anticipates.

The general proposal to introduce a new sentence in two parts, the second of which is in the community, is to be welcomed.

However, the Bill as introduced has some serious deficiencies. I will deal with these under the headings:

Sentencing;
While introducing some structuring of sentencing discretion by judges, the treatment is partial, resulting in duplication and conflicts of functions.

Grounds for extending the custodial part and the limits of validity of risk assessment;
The basis of a decision to detain someone in custody is too limited and could lead to unnecessary risks to public safety. There is an unrealistic expectation of the potential of risk assessment.

Post-release arrangements.
The treatment of how risks in the community will be managed is inadequate.

Sentencing

The Bill proposes some structuring of judges' decision taking when passing sentence. This is to be welcomed.

The structuring proposed, however, concerns only the new power to order the proportion of the given sentence that has to be served in custody. In doing this, the judge may consider the need for punishment and the need for deterrence. The judge, explicitly, may not take into account the need for public protection. No mention is made – either positively or negatively – of considerations of rehabilitation.

There is no attempt in the Bill to structure judges' decision taking when considering length of sentence. When doing this, the judge may continue to take into account the need for punishment, the deterrent effect, the need for public protection and the need for rehabilitation.

There are 4 strange consequences of this.

Firstly, when deciding the length of sentence, the judge takes into account the need for punishment and the deterrent effect. The judge then takes these same criteria into account when deciding the proportion of total sentence that will be served. This builds a multiplier effect into the legislation. For a serious offence it would, under the proposals, be expected that the convicted person would not only receive a long sentence but would be sentenced to serve a proportion of it greater than ½. In taking both decisions, the judge would be considering the same criteria.

Secondly, when deciding the length of sentence, the judge may continue to take into account the need for public protection, based on a judicial assessment of the risk the person being sentenced presents. This will also be considered, when Scottish Ministers and the Parole Board decide whether the person should be released at the conclusion of the period set by the judge on punishment grounds. Once more there is a multiplier effect. A person whose circumstances or behaviour suggest that they present a substantial ongoing risk to the community may expect to have this reflected in the length of sentence imposed by the court and in the proportion of that sentence it is ultimately decided they will serve.

I would also have concern that in changing the basis of the role of the Parole Board from a tribunal deciding to release some prisoners to a body deciding to continue the period of some prisoners in custody, the provisions would be vulnerable to challenge on the grounds that the Parole Board is exercising quasi-sentencing powers, which need to be surrounded by all the safeguards of a criminal trial.

The issues raised by the other two consequences to which I would wish to draw attention are rather different.

In considering the proportion of total sentence the convicted person should spend in custody, the judge is required to take into account the deterrent effect of the options available. That is, the judge is required to reach conclusions as to the differential deterrent effect of ordering periods in detention of between ½ and ¾ of total sentence length. That is an evidential question on which reliable empirical evidence is not available. In the absence of evidence, the decision as to the period of deprivation of liberty can only be based on judicial speculation. Speculation as to effect is not a sound basis for law. It would be better for the reference to deterrence to be removed. And

better still would be that judges be explicitly proscribed from basing decisions on deterrence other than where they have considered evidence as to deterrent effect in the circumstances of the case.

No reference is made in the Bill to consideration of the need for rehabilitative intervention when considering either the length of sentence or the proportion of sentence to be spent in custody. It would be better if consideration of need for rehabilitation when deciding both sentence length and proportion in custody were explicitly proscribed in the law. There is a risk, in the present climate of claims for rehabilitative effect of programmes both in prison and in the community and in the comfort afforded by the apparent scientificity of risk and need assessment tools that are now being used by criminal justice agencies, that the proposed two phase sentence will lead judges to hand down sentences with the intention of providing sufficient time for the convicted person to be subject to criminal justice measures that will allow for effective rehabilitative work. Such grounds would be insupportable by reliable empirical evidence and consequently speculative.

The Bill is not grounded in any critical analysis of possible grounds for sentencing. In proposing a very complex process of decisions – the complexity of which is inherently difficult to understand (and is made unnecessarily more complex by the arcane drafting style chosen for the Bill) – without any underpinning clarity as to what it is intended should be achieved at each stage, the result is confusing. Its consequences would be arbitrary.

There is one final, unrelated, point about sentences. This concerns indeterminate sentences.

The Bill does not affect the law in this area. However, the existing situation it summarises highlights the level of complexity that we now have. That suggests that we should consider removing some of that complexity. The present Bill may not be the place in which to do that but it should be considered.

It should firstly be noted that an indeterminate sentence pushes at the limits of the rule of law and the effective legal protection of the rights to liberty. Within the German jurisdiction, for example, there is lively debate as to whether such sentences can be compatible with the Constitution. In the United Kingdom life sentences are handed down much more frequently than in any other European jurisdiction. In a sustained effort to limit the extent of indeterminacy in the UK the European Court of Human Rights has imposed much greater clarity on the legal provisions regulating such sentences.

We should now be considering a further step.

The new Order for Lifelong Restriction (OLR) is an indeterminate sentence handed down after the most careful assessment of ongoing risk. Both mandatory and discretionary life sentences now separate a determinate period in custody based on the need for punishment and the indeterminate period which is decided on an assessment of risk. Neither, however, requires the level of care in considering how any identified risk might be best managed that characterises the OLR.

The procedures for the OLR are the most careful and least arbitrary that could be designed at the time. Their application across the spectrum of indeterminate sentencing should now be considered.

I would suggest that the law would be considerably improved by the adoption of two measures. **Firstly**, the discretionary life sentence should now be discontinued. Where a court considers that an indeterminate element may be necessary, it should only have available the OLR process. **Secondly**, a conviction for murder should lead always to an OLR assessment of ongoing risk. Only where that assessment indicates significant ongoing risk should an indeterminate sentence be handed down.

Grounds for extending the custodial part and the limits of risk assessment

The Bill also allows for extension of the custody part of the sentence by Scottish Ministers on the direction of the Parole Board. As described above, such extension would be over and above any

element for public protection that had been applied by the judge in considering the appropriate sentence length.

The process for extension of the custody part of sentence is triggered by the assessment by Scottish Ministers that the person undergoing sentence presents an ongoing risk of serious harm to the community. Such a provision presupposes that Scottish Ministers have – and can have – in place assessment processes robust enough to identify those who might present an ongoing risk.

This is an unrealistic expectation that demonstrates a fundamental misunderstanding of the limits of validity of risk assessment technologies.

The best processes of assessment of ongoing risk of future violence are capable of demonstrating some validity, when used with the greatest care by most skilled assessors, in identifying those who present the greatest risk. The limits of their validity, even in these most restricted circumstances, are the subject of continuing academic investigation. The area is deeply problematic. Probably the strongest claim that can be made for the best methods, applied in extreme cases by the most expert practitioners is that they are the least bad method available.

It clearly misunderstands the limits of what is possible to propose that there are methods available that can be used for the routine screening of all prisoners. Other than at the extremities of probability the outcomes from such screenings would be arbitrary.

It would also have to be anticipated that the methods available would tend to discriminate in the favour of those whose histories and circumstances were the least problematic. That is, those for whom the benefits of supervision in the community are least necessary.

I shall return to this, the most fundamental flaw in the proposals, in the final section of what I would wish to say. Before turning to that, however, I should like to make a brief technical comment on the proposals in this area.

In considering whether to refer a case to the Parole Board, the Bill foresees Scottish Ministers applying precisely the same test as will be used by the Board itself. That is, Scottish Ministers may only refer a case to the Board when the prisoner presents substantial risk of future serious harm to members of the community (Section 8.2 test). The Parole Board is then asked to determine whether the Section 8.2 test applies. In effect, the Board is not being asked to make an assessment, it is being asked to either confirm or overrule the Ministerial assessment. It is essential for judicial independence that such decisions on the liberty of the individual be taken in a politically neutral context. The provisions as they exist subvert that and leave the Parole Board vulnerable to political influence.

Clearly the test that should be used by Ministers in deciding whether to refer the case to the Parole Board should be different from that used by the Parole Board in deciding whether a person should continue to have their liberty denied them beyond the period deemed necessary by the courts for criminal justice purposes.

The test proposed in the Bill that the Parole Board is required to apply is unhelpfully narrow. They may only consider whether "the prisoner would, if not confined, be likely to cause serious harm to members of the public". Such a test is potentially counter-productive. It does not invite the Parole Board, as would be preferable to weigh the costs and benefits of continuing the sentence in the community against the costs and benefits of the person remaining in custody. If it is that community supervision is required in the interests of public safety – a proposition certainly meriting careful evaluation – then a fortiori it must be the case that those people in prison whose circumstances are the most problematic are those who stand most to benefit from release and careful resettlement and whose effective resettlement would contribute most to public safety.

I would suggest that the Boards decision needs to be based on more than the risk presented by the person being considered and should extend to the adequacy of the plans that have been made for release. It should have 3 elements. **Firstly,** It should rule whether the interests of public safety are best served by continuing the offender in custody or by releasing the offender to supervision in the community. **Secondly**, except where there exists an imminent and foreseeable risk of grave public

harm or it is in the long term interests of public safety to retain the person in custody, it should direct that the person be released. **Thirdly,** where it is in the long term interests of public safety to release the person into supervision but the plans for that persons supervision are inadequate for public protection or the needs of the person being considered, it should order that improved plans be drawn up to allow for the person's timeous release.

Post-release responsibilities

The most profound shortcomings of the Bill, however, concern the very limited consideration it gives to the community part of the sentence.

Essentially the Bill focuses on ensuring that most cautious consideration will be given to release of prisoners into the community. The policy memorandum, on the other hand, argues that compulsory post-release supervision is being introduced in the interests of community safety. That is a laudable intention. How it will be achieved, however, is only cursorily dealt with in Section 7.1 that requires "Scottish Ministers and each local authority (to) each jointly establish arrangements for the assessment and management of the risks posed in the local authority's area by custody and community prisoners". There is no requirement for individualised post-release plans.

There are 3 distinct elements to post-release arrangements that might have been addressed by the Bill:

Licence conditions, as anticipated in Section 11 (2) (b) and Section 14 (3),

Supervision and control duties placed on the local authority,

Resettlement and support duties placed on the local authority.

The Bill focuses on punishing and isolating the offender from the public if he presents an ongoing risk. In considering the part of the sentence the person could spend in the community it places all the obligations on the offender in the form of compliance with licence requirements.

We know that punishment in the form of imprisonment is, in Scotland, preponderantly focused on the most disadvantaged and socially excluded members of the community.

But the Bill makes only the scantest of references to any public duties to enable the successful settlement of persons released in prison into contributing and benefiting roles in our communities.

While it is clearly a purpose of the justice system to express the offence felt by the community at criminalised behaviour and to protect the public from imminent danger, the failure of the Bill to attend to any issues related to the duty of the authorities to enable the legitimate participation of persons liberated from prison is both surprising and disappointing. The failure to do so severely limits the potential of the provisions to make a contribution to public safety.

I would suggest that there is a need for the Bill to be fundamentally re-examined and restructured so as to make clear the duties throughout the sentence of the authorities to offer opportunities for personal development, counselling, support, controls and supervision as is appropriate to the needs of each individual.

In terms of the post release period, this would be reflected in statutory duties on local authorities to provide to the person released from prison, **firstly,** planned levels of supervision and control commensurate with the risk of re-engaging in offensive behaviour that they present and, **secondly,** planned levels of guidance, support and service in areas of housing, employment, education and training, relationships, cultural and social life, financial management and health care commensurate with the levels of social disadvantage they have sustained.

The levels of punishment we find necessary in Scotland today are an unwelcome indicator of the inadequacy of our social policies to promote an integrated society in which all can participate equitably. To promote law that visits, as unremittingly as this legislative proposal would, the

consequences of that on those who are already disengaged is to ignore the evidence we have and to continue to expose the whole society to the level of damage it faces at present.

As it is proposed the law would provide an new set of very complex provisions offering increased uncertainty and deprivation of personal autonomy to those subject to it and would guarantee none of the services that, once it has punished, a just society would ensure for those who are alienated from its benefits and duties.

SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

Introduction

The Criminal Law Committee of the Law Society of Scotland ("the Committee") welcomes the opportunity to submit written evidence to the Justice 2 Committee of the Scottish Parliament on the Custodial Sentences and Weapons (Scotland) Bill and makes the following comments:-

General Comments

The Committee gave evidence to and prepared a paper for the Sentencing Commission for Scotland entitled, "Early Release from Prison and Supervision of Prisoners on their Release". The paper included a proposed model for release and supervision of prisoners. The model is outlined below. The Committee felt this model might better protect the public than the current system. In particular, the conduct of the prisoner in custody was an important factor in securing release. The proposals in the Bill appear less radical in their nature, and the Committee invites the Justice 2 Committee to consider whether any aspects of the prepared model might assist in amending the Bill. The Committee welcomes the proposal to place all prisoners serving 6 months or more on community licence. Similar arrangements are made for shorter sentences for specific crimes.

The Committee notes the increased involvement for the Parole Board in terms of schedule 1.
The Committee notes that Schedule 1 of the Bill in effect replaces Schedule 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 as amended by the Convention Rights (Compliance) (Scotland) Act 2001 and the Committee notes the revised role for the Parole Board for Scotland in terms of Schedule 1.

In particular, the Committee notes that membership must now include, in terms of paragraph 2(d) of Schedule 1, "a person who the Scottish Ministers consider has knowledge and experience of the assessment of the likelihood of offenders causing serious harm to members of the public and, in terms of paragraph 2(e) of Schedule 1, "a person who the Scottish Ministers consider has knowledge and experience of – (i) the way in which and (ii) the degree to which, offences perpetrated against members of the public affect those persons. The Committee would seek clarification as to who it is envisaged should fulfil these roles as Parole Board members.

The Committee further notes that, in terms of paragraphs 20 and 21 of Schedule 1, the Parole Board must, as soon as practicable after the end of the reporting year, send to the Scottish Ministers a report on the performance of the Parole Board's functions during that year and also, in terms of paragraph 21, must as soon as practicable after the beginning of each planning period, send to the Scottish Ministers a plan in relation to that planning period – (a) providing details as to how the Parole Board intends to carry out its functions and (b) setting out performance objectives and targets in relation to its functions.

In terms of paragraph 23, the Scottish Ministers must lay a copy of the paragraph 20 report and the paragraph 21 plan before the Scottish Parliament. There is, however, no time limit within which the Scottish Ministers must comply with this requirement detailed in paragraph 23.

The Committee welcomes the proposals contained in chapter 2 of the Bill with regard to the release of prisoners by replacing the current automatic early release provisions with new provisions for combined custody and community sentences applicable to those sentenced to a term of imprisonment.

The Committee further welcomes the proposals with regard to the sale of non-domestic knives and swords by amending the terms of the Civic Government (Scotland) Act 1982 to require a dealer in non-domestic knives to obtain a knife-dealers licence from the local authority.

Specific Comments

Confinement Review and Release of Prisoners

Section 6 (setting of custody part)
The Committee notes that, in terms of section 4(2) of the Bill, the Scottish Ministers may by order amend the definitions of 'custody and community sentence' and 'custody only sentence' by substituting a different term for term mentioned in those definitions but has concerns at the term of 15 days or more.

In particular, such a sentence imposed by the court would clearly be at the lower end of the scale for a custodial sentence. Such a sentence may well provide retribution and deterrence with regard to the custody part of the sentence but cannot be seen to provide rehabilitation with regard to the community part of the sentence given that, in effect, the prisoner could be subject to the community part of the sentence for a period of less than one week.

Section 8 (Review by Scottish Ministers)
While the Committee accepts that, in determining whether a prisoner would, if not confined, be likely to cause serious harm to members of the public and, in terms of section 9, consequences of review, Scottish Ministers must release the prisoner on community licence on the expiry of the custody part of the prisoner's sentence, the Committee is concerned that no other conditions apply, such as the prisoner being of good behaviour during the custody part of the sentence. The Committee's position is that this, together with progress towards rehabilitation, willingness to accept treatment where appropriate and other relevant issues, should also be taken into account in determining whether a prisoner is suitable for early release, the remainder of the sentence being spent on licence in the community.

Section 27 (release on licence of certain prisoners supervision)
The Committee agrees with the provisions of section 27 of the Bill in that where a prisoner (other than a person liable to removal from the United Kingdom) is either a life prisoner, a custody and community prisoner with a sentence of 6 months or more, or such a prisoner who is detained in custody beyond the court imposed custody part, a prisoner released on compassionate grounds, an extended sentence prisoner, a sex offender or a child, the Scottish Ministers must include a supervision condition on a licence requiring him to be supervised by an officer of the local authority. In particular, the Committee agrees that such an officer should be a social worker.

Section 42 (fine defaulters and persons in contempt of court)
The Committee agrees with the provisions of section 42 of the Bill in that custody-only prisoners with no community part of a sentence should also include those serving a period of imprisonment as an alternative to payment of a fine and those serving a period of imprisonment in respect of a conviction for contempt of court.

The Criminal Law Committee Model

The Committee have considered a number of proposals to replace the existing statutory framework and have devised a model that allows for the courts to provide the accused with an early release date subject always to certain obligations and requirements incumbent upon him. The Model is as follows:

- Every sentence of imprisonment imposed by a court in Scotland should provide for the accused the opportunity of an early release date.

- The entitlement to early release should always be subject to certain obligations and requirements incumbent upon the prisoner, the minimum of which is the requirement that he or she is of good behaviour whilst in custody. Depending on the nature of the offence, or the personal circumstances pertaining to the prisoner, many other additional obligations may be

imposed, for example, the requirement to participate in offending-behaviour or addiction programmes.

- The length of any sentence imposed should always be decided at the outset by the sentencer, taking account of any statutory or judicial guidance provided, but always seeking to impose a just and equitable sentence based upon all of the facts and circumstances of the particular case.

- The sentencer should, when sentencing, publicly identify and announce the following:-

  (i) The total length of the sentence.
  (ii) The minimum term to be served in custody
  (iii) The conditions which the prisoner must satisfy to be entitled to early release (this may include a condition that he or she co-operates with the relevant agencies regarding any future programmes for release etc.)
  (iv) The term, if any, to be served on licence
  (v) The term, if any, to be served on licence and under supervision.

- Where a prisoner has fully complied with any requirements properly imposed upon him or her, he or she will be automatically entitled to early release at the end of the minimum term imposed by the sentencer, unless the Scottish Ministers consider that the prisoner presents a risk of serious harm to the public. In such a case the Ministers would be entitled to refer the case to the Parole Board for Scotland ("the Parole Board"). The Parole Board would then consider the case and decide whether such a prisoner should continue to be confined. No prisoner could be confined beyond the total length of the sentence originally imposed. A similar course of action could be taken against any prisoner who has not complied with the requirements for early release.

- The prisoner would have a right to a further review by the Parole Board no later than twelve months from the date of the last decision.

- A prisoner entitled to early release as detailed above will be released on licence, subject to the terms of any such licence. A failure by the prisoner to obtemper the terms of his or her licence would result in the prisoner being liable for recall to custody for a period not exceeding the total length of the sentence.

- Recall procedures would be carried out by the Scottish Ministers, and review of the decision to recall would be carried out by the Parole Board.

Such a regime would combine elements of retribution, punishment, protection of the public, with rehabilitation and re-integration. It would also allow the sentencer the flexibility to reflect the gravity of the crime in the sentence and incorporate elements to address individual offending behaviour.

Weapons

The Committee, is of the view that effective measures require to be put in place in order to bring about a culture change needed to reduce knife crime in Scotland.

The Committee accepts that it can be shown that most knife attacks are committed using a non-domestic knife which is readily distinguishable from a kitchen knife. The licensing scheme for the sale of non-domestic knives can, in the Committee's view, only be a positive measure in the overall objective to reduce knife crime in Scotland. The Committee's view is that it is essential that in addition to the licensing of non-domestic knives, other non-legislative initiatives aimed at tackling knife crime must be adopted. The Committee is concerned that the licensing of non-domestic knives may well, however, result in those involved in violence simply changing their weapon of choice to a domestic knife.

The Committee support the terms of section 46 of the Bill whereby Scottish Ministers can modify existing legislation to set out exceptions for specified legitimate purposes, such as antique collecting, fencing, film, television and theatre etc. when adding swords to lists of weapons which

cannot be sold and further supports the Scottish Ministers power to alter by statutory instrument in terms of section 27A(6) of the Bill to either add, amend or remove articles or classes of article in order to provide that a licence will not be required to sell folding pocket knives, skein dubhs or kirpans where the blade is less than 7.62 cms long.

The Committee notes that this would, of course, reflect the current law on carrying knives in public as set out in section 49 of the Criminal Law Consolidation (Scotland) Act 1995 which provides a specific exception for pen-knives of this size and provides defences in law for knives (such as kirpans and skein dubhs) carried for religious reasons or as part of a national costume.

PETITION FROM MR PAUL MACDONALD

The following petition was referred by the Public Petitions Committee to the Justice 2 Committee. At its meeting on Tuesday 5 December 2006, the Justice 2 Committee agreed to note and conclude consideration of the petition as the issues raised would be considered as part of the Committee's Stage 1 Report on the Custodial Sentences and Weapons (Scotland) Bill.

Petition by Paul Macdonald, on behalf of the Save Our Swords Campaign, calling for the Scottish Parliament to oppose the introduction of any ban on the sale or possession of swords in Scotland which are used for legitimate historical, cultural, artistic, sporting, economic and religious purposes.

The Sco
Parliament

PE893

SCOTS ARLIAMENT

Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:

Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

Paul Macdonald
Macdonald Armouries
At the Sign of the Cross and Sword,
Brunswick Street Lane,
Edinburgh,
EH7 5JA

macdonaldacademy@aol.com

0131 557 1510

Text of petition:

The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

Petition by Paul Macdonald, on behalf of the Save our Swords Campaign, calling for the Scottish Parliament to oppose the introduction of any ban on the sale or possession of swords in Scotland which are used for legitimate historical, cultural, artistic, sporting, economic and religious purposes.

Additional information:

Any additional information in relation to your petition, including reasons why the action requested is necessary, should ***not*** *be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.*

Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Requests were made for individual representations to be made to a wide public audience of the various groups affected by the proposals before the consultation process began and again once this was underway.

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee's consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

*Please indicate below if you do **NOT** wish to make a brief statement before the Committee when it comes to consider your petition.*

I do NOT wish to make a brief statement before the Committee ☐

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature

Macdonald.....

Date

06/10/05.....

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088

Additional Information

The online version of the petition can be seen at the following address - http://www.petitiononline.com/Swords/petition.html

The petition was created in response to the proposals to ban the sale of swords in Scotland, potential measures that would seriously affect the law-abiding and long standing traditional practices of many different areas in Scottish public life such as collectors, martial artists, sports fencers, historical fencers, re-enactors, antique dealers, museums, highland dancers, fight directors, swordmakers, theatrical companies and thousands of Scottish history and clan heritage enthusiasts nationwide.

The main reasoning for the petition was also to highlight the fact that a ban on the sale of swords would effectively do nothing to reduce crime figures in Scotland, what little there are with swords annually (around 1% of all knife-related crimes per year) and that such measures would impact only on thousands of Scottish law-abiding citizens.

ANNEX B

At the Sign of the Cross and Sword,
Brunswick Street Lane,
Edinburgh,
EH7 5JA

Tel: 0131 557 1510
macdonaldacademy@aol.com
19th June 2006

Dr. James Johnston,
Clerk to the Public Petitions Committee,
TG.01
Parliamentary Headquarters,
Edinburgh,
EH99 1SP

Scottish Parliament Public Petitions Committee – Scottish Executive and Strathclyde Police Violence Reduction Unit responses to Petition PE893

Dear Dr. Johnston,

I write further to your letter of 30th March 2006, inviting my comments on the responses given by the Scottish Executive and the Violence Reduction Unit of Strathclyde Police to Petition PE893 and the subject of legislation of swords in Scotland.

Firstly, my thanks for inviting and considering my responses to these matters, which hold deep personal and professional concern for myself and many other members of the Scottish public.

With regard to the response from the Scottish Executive, I am first greatly encouraged to hear of the Executives commitment to tackling knife crime in Scotland. There are no doubts as to the seriousness of these matters in Law and public life and I wish only for the Executive to consider and implement the most *effective* actions towards legislation and on the streets in order to reduce crime in any way.

The Executive then refers to measures aimed towards restricting and/or licensing the sale of non-domestic knives and presumably swords and I would like to here respond to this issue referring separately to each blade type concerned.

1 – Issue of restricting sales/licensing "non-domestic" knives in Scotland

My first serious question towards this issue is, "Need this be an issue?"
The pertinence of this question is due to the fact that "non-domestic" knives have **not** been proved to present or have caused any greater threat or problem than domestic knives.
If the Scottish Executive were to research records of past injury, assault, attempted murder and murder where knives were used, it may be surprised to find the majority of cases involve the use of common kitchen or domestic knives.

The reason for this is purely practical from the standpoint of the criminal.
Kitchen knives are –

- Easily Available
- Extremely Affordable
- Easy to conceal
- Disposable

For these reasons, the common kitchen knife has been perhaps the most popular choice of the criminal on the street to carry.
Other popular bladed weapon choices are screwdrivers and chisels, again being a perfectly sensible choice for the criminal who if stopped by police and searched can easily claim that his tool was `innocently` intended for domestic DIY or mechanical repairs, thus deceptively but legally evading an initial criminal charge for carrying a fixed blade out-with 3" in length without good cause.

Kitchen knives, screwdrivers and chisels are the predominant bladed tools used to injure, maim and murder in Scotland today. Have "non-domestic" knives been proved to be any more of an issue or greater public concern than domestic blades?
They have not.

For this reason alone, if the Executive proceeds with any licence scheme or legislation targeting "non-domestic" knives, then it does so unjustly and with no good reason but conjecture and supposition.
This should never form the basis of reason to create any Laws.

If the Executive believes that "non-domestic" knives are an issue, then it will fail to effectively address the problem of street crime in Scotland today.

2 – Issue of restricting sales/licensing swords in Scotland

With regard to the suggestions of licensing the sale of swords in Scotland, I may ask the same question, "Have swords been proved to be an issue of serious enough public concern that additional legislation be sought"?

It would appear not. The only Scottish statistical figures brought to light recently that differentiate between swords and knives used in criminal activity have originated from Strathclyde Police and Lothian and Borders Police. In both cases, swords have accounted for proportionately less than 1% of annual criminal figures compared with knife use.
With these figures originating from perhaps the largest and busiest police bodies in Scotland, it is more than likely that collective overall factual statistics for proportionate knife/sword crime in Scotland would realise an even lower percentage of swords being used than the Strathclyde/Lothian figures indicate.

The reasons that swords are rarely ever used by criminals are obvious –

- Not so readily available
- Expensive to buy (particularly for any sword that can hold an edge or is light and balanced enough for practical use)
- Extremely difficult to conceal (i.e. Not carried casually on streets)
- Not so readily disposable

Swords have recently been shown to be most effective as media and political scare-mongering tools, as they easily capture the imagination of both public and politicians alike. That however, should never be the basis for exaggerating reports or ideas of criminal activity or supposed criminal culture with the sword in Scotland.

Cold facts from our Scottish Police forces tell us that there is not an overriding problem with swords in the hands of criminals in Scotland today, and most knife crime details reveal that kitchen and common blade types are typically used, suggesting that there is also no particular problem with "non-domestic" knives.
Is the Scottish Executive really prepared to spend its and taxpayers time and money considering and passing legislation on problems that do not exist?

Another question that the Executive should seriously consider is "Who would realistically be affected by any additional legislation/licensing scheme to restrict sword sales in Scotland?"

Assuming that any license scheme would incur costs to holders, thousands of legitimate businesses and practices alone shall bear the cost of what would be a futile exercise in control.
The last persons to be affected would be the criminals, who if of a mind to commit any crime with any type of blade, will continue to do so regardless of a blades legal classification and/or penalties incurred if arrested for that crime.

I am heartened to hear that the Executive is aware of and sensitive to potential affects upon recreational, cultural and historical and activities in Scotland where swords may be legitimately sold, collected, displayed or used for educational, sporting, religious, dramatic or martial study and practice purposes.

The Executive states in its response that, "Existing legislation on knives and swords already provides for exclusions or exemptions for antique weapons and weapons with blades for religious, cultural, or historic purposes and the Executive has no plans to remove such exemptions."

The Executive should also consider that existing legislation on knives and swords already provides for any criminal activity involving such blades as being clearly out-with the Law and as such subject to penalties as laid out within the Law. These controls and penalties already exist as a deterrent to carrying out a crime involving a blade.
A licensing scheme for blade purchase or ownership would be no further deterrent to the criminal mind.

Strathclyde Police have been helpful in providing figures in response to PE893. I would however, disagree with their general claim that "It is accepted that any use of a sword during an act of violence normally results in very serious injury".

As opposed to any type of knife that any one can `point-and-stick`, for a sword to be used effectively it has to be wielded effectively. This usually involves some amount of martial theory and practice, something that common criminals have no self discipline to follow and do not possess.
This is why criminals use swords for showing-off and intimidation more than serious use. The Strathclyde Police statistics show that one murder alone involved the use of a sword. Any murder is one too many, but this hardly highlights the sword itself as being any great threat to the Scottish public.

Recently in Edinburgh, two men were assaulted by two attackers `wielding` swords and both escaped with non-serious cuts. The only reason for this is that the `wielders` had no idea how to effectively make a sword work (a good thing by far).
Another Edinburgh incident saw a female shopkeeper confronted by a criminal armed with a "samurai" sword and demanding money, whereupon she effectively disarmed the man and he ran away.

Such incidents prove that the sword itself is not a "deadly weapon" by any means. A sword is not a simple tool and should not be treated as such.

I cannot agree with the recommendation of Strathclyde Police to treat swords the same as "non-domestic" knives in terms of legislation. Until the sword can be proved to be as great a concern and threat to the Scottish public as any type of cheap, concealable knife, then such recommendations are unjustified and unsubstantiated.

I hope that these views are helpful and that the Scottish Executive might carefully consider all facts presented. I shall be happy to further discuss or respond to any other matters regarding the proposed legislation and petition PE893, where I shall be contactable at the above details.

Yours Most Sincerely,

Paul Macdonald,
Macdonald Armouries,
Macdonald Academy of Arms

8 December 2005

Ref: JC/TH/MJ

STRATHCLYDE
POLICE

CHIEF CONSTABLE
William Rae QPM

Dr James Johnston
Clerk to the Public Petitions Committee
TG.01
Parliamentary Headquarters
EDINBURGH
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Violence Reduction Unit
Pegasus House
375 West George Street
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Tel: 0141 532 5847

Dear Dr Johnston

Scottish Parliament Public Petitions Committee – Consideration PE893

With regard to your letter dated 3 November 2005, the following information is provided and represents the views of the Strathclyde Police Violence Reduction Unit:

In a pro-active effort to reduce the levels of violence in Strathclyde and in particular numbers of incidents that involve the use of knives, Strathclyde Police force established the Violence Reduction Unit in January 2005.

The first of its kind in the United Kingdom, the unit is developing practical solutions to deal with the whole continuum of violence, differing types of violence and the root causes.

The unit has already undertaken much analytical research. This work confirms that although the use of knives is a very serious issue in the west of Scotland, at this time the same cannot be said about swords. It is accepted that any use of a sword during an act of violence normally results in very serious injury, not to mention widespread media attention, however in the west of Scotland it is not the weapon of choice. During the past year (2004 – 2005) the use of a sword accounted for 0.59% of recorded violent incidents in Strathclyde. This figure includes Murder, Attempt Murder and Serious Assault. As a comparison, in some cases the use of knives can account for up to 50% of particular serious assaults on the person. In real terms, our records indicate that a sword was used in one murder, four attempted murders and 23 serious assaults.

Accident and Emergency Departments in Hospitals across the country are actually treating many more victims of violence than that which is being reported and recorded by the police service (some Health Boards estimate that between 50 – 70% of violence related admissions are not being reported). In the absence of all this data a true reflection of violent incidents involving swords cannot be established, however it is considered that the use of swords in Strathclyde accounts for levels greater than the above figure.

INVESTOR IN PEOPLE

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www.strathclyde.police.uk

Earlier this year, the unit submitted its response to the Scottish Executive consultation; Tackling Knife Crime. Particularly in relation to swords, the views of the department remain the same.

A sword should be treated in the same terms as a non-domestic knife and although the numbers of incidents are few, it can be used and on occasions is to cause physical harm. It should therefore be subject to the same controls and on this basis the recommendation that shops will require to be licensed is supported.

We need to reduce the likelihood that swords will fall into the wrong hands and be used for illegal purposes. By ensuring that shops only sell swords to approved organisations will provide a second line of scrutiny to the selling process. While it is accepted that the introduction and maintenance of such a system will place an additional responsibility on to those who sell swords, this recommendation is supported.

There is no reason for an outright ban on the sale of swords. There are many circumstances when persons would have possession of swords for legitimate purposes, similar to the use of knives. The controls being suggested for non-domestic knives should also extend to swords.

If, by limiting access to knives and swords, one murder is prevented then we consider this worthwhile.

I hope that this information is of some assistance to you. Should you require any further information please do not hesitate to make contact with Inspector Tom Halbert of my unit. He can be contacted at tom.halbert@strathclyde.pnn.police.uk or by telephoning 0141 532 5873.

Yours sincerely

John Carnochan
Detective Chief Superintendent

SCOTTISH EXECUTIVE

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Date: 22 November 2005

SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE: CONSIDERATION PE893

Thank you for your letter of 3 November in which you sought comments on the issues raised in the above petition.

The Executive remains deeply concerned about the continuing high incidence of knife crime and its contribution to violent crime. The homicide figures for Scotland, year on year, show that the use of a sharp instrument or bladed weapon was the most common method of killing. The role of knives and other bladed weapons in homicides and assaults needs urgent and effective action. Accordingly the Executive has been undertaking a review of knife crime law and enforcement, as promised in the Partnership Agreement.

The First Minister in his statement on 22 November 2004 set out a programme of measures to address the unacceptably high level of knife crime in Scotland. This 5 point plan proposed:

- an increase in the age for the purchase of knives from 16 to 18.
- the police to make more use of stop and search powers, and be given the power of arrest on suspicion of carrying a knife or an offensive weapon.
- double the sentence for possession of a knife or offensive weapon from two years to four years.
- a licensing scheme on the sale of domestic knives and similar instruments.
- a ban on swords.

Measures to implement the first three of First Minister's 5 point plan, which were subject to consultation earlier this year in the consultation paper '*Supporting Police, Protecting Communities*', http://www.scotland.gov.uk/consultations/justice/sppc.pdf have been included in the Police, Public Order and Criminal Justice (Scotland) Bill that is now before the Scottish Parliament.

The remaining 2 proposals set out in the First Minister's five-point plan (on restrictions on the sale of non-domestic knives and swords, including by means of a licensing scheme) are the subject of Mr Macdonald's Petition. These proposals have been the subject of separate consultation in '*Tackling Knife Crime – A Consultation*', http://www.scotland.gov.uk/Publications/2005/06/27110147/01518 . The closing date for comments on this paper was 30 September. Some 176 responses were received, including comments from Mr Macdonald along similar lines to what is set out in PE893. The Committee will wish to be aware that the responses to the consultation also included 3 separate petitions supporting the Executive's proposals on knife crime, with 2,284 signatures in total.

The Executive is currently collating and analysing these responses and Ministers will consider this carefully before deciding on the way forward with the proposals to introduce a restriction on the general sale of non-domestic knives and a possible licensing scheme for such items. Any legislative measures that emerge from this consultation will not be included in the Police, Public Order and Criminal Justice (Scotland) Bill that is already with the Parliament but will be brought forward in separate legislation to be introduced at a later date.

The Executive acknowledge that a large number of respondents have expressed concern about the possible implications for historic and cultural activities arising from the possible introduction of restrictions on the general sale of non-domestic knives and licensing scheme. Existing legislation on knives and swords already provides for exclusions or exemptions for antique weapons and weapons with blades for religious, cultural or historic purposes and the Executive has no plans to remove such exemptions. The Executive has also made clear that, in bringing forward proposals to strengthen legislation on bladed weapons, it has no wish unnecessarily to restrict or adversely impact on cultural, sporting or dramatic activities.

The Executive therefore values the many traditions and pursuits that contribute towards our country's heritage and diversity. However, the culture of violence in Scotland, especially knife-related crime, is enduring, widespread and deep-rooted. It is an ugly and contemptible aspect of our society and one which blights too many lives in our communities. There are no simple, one off solutions to violence and its many causes but the Executive is committed to exploring ways of strengthening current laws. Ministers have listened to what the police and others have said about the gaps in current legislation and are working to address those issues through the Police Bill and by exploring further measures.

The format of any proposed legislative measures on the introduction of a licensing scheme and any further restrictions on the general sale of non-domestic knives and swords will take account of the responses we have received to our recent consultation. The views expressed by Mr Macdonald in his Petition, as well as the views of others who responded, will therefore assist us in determining the way forward with these measures.

Yours sincerely

Gery McLaughlin

SUBMISSION FROM THE MUZZLE LOADERS' ASSOCIATION OF GREAT BRITAIN

Thank you for your letter of 10 October concerning the above; I have been asked to respond on behalf of the MLAGB. The provisions of the Bill that deal with custodial sentences are outwith the scope of this letter and any reference to said Bill thus refers only to 'Weapons' (sic), in this case knives and swords and the like.

My Association continues to have very grave reservations about this Bill which, frankly, is not well-founded. By excluding domestic knives and DIY or craft knives, it completely ignores those very items that, on all discernable evidence, are misused the most. This, it seems to me, is a fundamental and profound flaw that weakens beyond redemption the logic and argument for the proposed legislation in its present form.

It is no business of good Government to make criminals of the law-abiding, nor is it just or fair to impose undue restriction and cost upon the many legitimate small dealers and retailers who will be most affected by this Bill. Bans, with or without lets and easements are rarely the answer to perceived problems, and in this case the structure of the logic underpinning these proposals is not sustainable. A far more effective approach must be via legislation that makes it a very serious offence to carry in public, without lawful authority or reasonable excuse, any form of bladed or pointed implement that may fairly be regarded as a weapon by use or misuse. This would catch the thug wielding machete, 'Samurai sword' (sic), or, critically, kitchen knife, whilst allowing the law-abiding – chefs and the members of this Association, for example – to go about their business without fear of arrest. It would also render superfluous the clumsy and ineffective licensing system that, frankly, will be difficult to administer, costly to maintain and an ongoing thorn in the flesh of all concerned.

I commend this simple and far more effective approach to you; I should be happy to argue the case for it should committee so desire.

SUBMISSION FROM NATIONAL ASSOCIATION OF RE-ENACTMENT SOCIETIES

In respect of the proposed ban on the sale of swords in Scotland

I am requested by the Executive Committee to write in my position as Public Relations Officer of the National Association of Re-enactment Societies. Founded some sixteen years ago, it is our function to represent the interests of British re-enactors of history to Government departments and other bodies. In particular, we seek to ameliorate legislation as it is being formulated to take account of the activities of those that we represent.

Over 90% of UK re-enactors are now members of an organisation that has NAReS membership and employ the Guidance Notes that we issue on many subjects from black powder storage to the requirements of the Disability Act. Re-enactment is a sane, sensible and worthwhile pastime that adds enormously to the portrayal of our past in castles and historic monuments throughout the land. Every society or club is self-regulating and powerfully aware of the high profile of costumed personnel in public, whether or not pursuing the purposes of their club.

We feel that due exception should be made within the act that is currently before the Assembly to take into account the needs of the ordinary people of the Scottish nation who do so much to ensure that our history is accessible to all. To this end, we would ask the Committee to recommend an exemption for members of properly constituted re-enactment clubs and societies, so that they may continue to purchase and wear swords and knives appropriate to the period they portray.

SUBMISSION FROM MR DAVID NEILSON

I write to you as a sales agent, working and living in Scotland and engaged in the sale of pocket knives, Swiss Army Knives and multi tools. I have been in the business for some thirty years. I supply retailers in sports, hardwear, fishing, shooting, marine,agriculture and garden centres.

I would support any Bill that I felt would help to reduce violent crime in Scotland, however, I feel that this Bill is fundamentally flawed in the methods by which this objective is sought. The reasons for this are as follows:

The information on which this Bill's consultation process was based was factually incorrect, which has been acknowledged by the Justice Minister's Knife Consultation Team in an email to my agency principal… "*Statistics, as is the case in the Home Office Recorded Crime, held centrally by the Executive do not distinguish the weapon used in crimes such as serious assault. As you know there are specific crimes concerned with offensive weapons such as the offence of 'having in a public place an article with a blade or point'. However knives are not identified separately from other types of offensive weapon. At present, the only regular statistical collection which includes information on the involvement of "sharp instruments" is the homicide statistics collection"*

The Ministerial Forward quoted statistics about "Number of Murders with Knives." These figures are incorrect as there is no data available that is this specific – a fact which was raised in the consultation process. The figures available in fact show murders with sharply pointed Instruments e.g. screwdrivers, broken glass etc. – **not just knives**.

I find it disappointing that a change in the law is being considered, due to a perceived problem essentially within the Glasgow area. A change which would affect retailers and consumers alike. e.g. Every farmer who buys a knife from his local hardwear or agricultural retailer for the purpose of general farm use, will find himself unable to purchase locally in many cases, as by no means will the majority of retailers wish to be licensed for what is most likely a small part of their business.

Is it the intention of this Bill to impose licensing on every Scottish Garden Centre, DIY Store, Outdoor Actvities Store, Department Store, Gun Shop and Fishing Tackle Store, not to mention multiple retailers such as Marks & Spencers, NEXT and B&Q? All of these stores sell non domestic knives and under the current Bill would have to obtain a license. None of these stores sell swords so it seems ridiculous that they need a license to sell something as commonplace as a small Swiss Army knife, pruning knife or Multi-Tool. This is the reality of the Bill as it currently stands.

I would also question the ability of individual local authorities to cope with the burden of administrating this scheme. **There will be literally thousands of retailers who will require licensing.**

If it is the objective of the Bill to control the sale of Swords and large knives such as 'fantasy / movie knives' and combat type knives which are inherently difficult to define in law, surely the simplest way to deal with these products is to use a blade length criteria i**.e. a retailer would need a license to sell a non-domestic knife with a blade length in excess of 6" (15.5cm).** The Bill would then be tackling the type of product and retailer that I feel sure is the real problem in Scotland.

The above strategy would also make the overall number of outlets requiring licensing manageable for each local authority. It would take out Garden Centre's, DIY Stores and Outdoor Shops etc. concentrating only on those shops that focus on what are perceived as **anti-social products with no legitimate use.**

We must not forget the current statutory instruments that exist to prohibit those who may want to 'arm' themselves with a knife – whether domestic or non domestic. Namely; Section 139 of the CJA 1988 which makes it an offence to carry a bladed or sharply pointed instrument in a public place without lawful authority or good reason, except for a folding pocket knife which has a cutting edge not exceeding 3" This primary piece of legislation when implemented correctly along with a stop-and-search policy and strong sentencing should be more than adequate to deal with a geographically specific urban problem.

The above legislation equally applies to domestic and non-domestic knives and expressly gives an exemption to small folding pocket knives which are an everyday item – which begs the question, **why should it be necessary for a retailer to apply for a licence to sell a fully legal everyday item that can be carried at any time in a public place without let or hinderance?**

On a practical note, the Bill will also be largely ineffective at limiting supply of knives into Scotland or controlling who is allowed to buy them as non Scottish internet retailers will simply fill the gap left in the market.

The interpretation of this Bill by commentators within the rest of the UK and the world may well be such that Scotland receives a reputation as a country that is so violent that it has had to licence the sale of products as commonplace and inoffensive as the humble Swiss Army Knife. What would this mean for Scotland's vital tourism industry?

In conclusion: the evidence that has been used to promote this Bill is fundamentally flawed, the proposed Bill has a huge hole in it because it fails to address sales of domestic knives, the Bill in its present form will lead to an impossible backlog for local authorities as it will apply to many thousands of shops that I believe have never been considered as selling knives, the Bill will lead to the loss of Scottish jobs (retail staff, salesmen and agents) and creation of jobs outside Scotland (Mail order and Internet), in its present form this Bill will inevitably restrict retail supply of safety related knives for Diving, Mountaineering, Sailing and other Watersports, this may put lives at risk.

Finally and most important of all – this Bill will NOT achieve its aims of reducing violent knife crime because it does not address the root causes of such violence.

I sincerely hope that common sense will prevail and that all of the aforementioned points will be considered.

SUBMISSION FROM NORTHERN TO-KEN SOCIETY

With regard to the 'Weapons' section of the above mentioned Bill this Society would wish to acquaint you with a similar, if not identical, issue recently discussed by ourselves and representatives of the Home Office in Westminster.

As an organisation, originally founded in 1968, representing the interests of collectors of Genuine collectable and antique Japanese Swords in the United Kingdom, we were invited to clarify the status of so-called 'Samurai' swords for the purpose of legislation being considered for the future.
Our meeting took place with Ms.Catherine Webster, Head of the Offensive Weapons Section, and Mr. Jonathan Batt at the Home Office on the 31st August and we invite you to consult with them upon their views and opinions of that meeting.

I understand that a 'bullet point' report to our members on this meeting has been forwarded to you by Mr. Alex Bean, and you may see several documents relating to this entire issue on our website at www.northerntokensociety.co.uk, but enclose the following to summarise the topics discussed on that occasion:

1. Being intimately familiar with the subject, we felt able to state that 'Samurai' swords, as defined by ill-informed and uneducated newspaper headlines, are not used in the pursuance of any crime in the United Kingdom - the objects so labelled being visibly and invariably cheap replicas or reproductions made to resemble genuine Japanese swords. All such swords depicted in newspaper articles have so far been of this type and no Home Office statistics exist to show the use of any genuine Japanese sword in crime.

2. The high monetary value and worldwide artistic status of genuine Japanese swords precludes both their easy availability and indeed desirability as simple weapons of choice for criminals. The highest price paid for a Japanese Art sword at auction in this country exceeds £200,000, and the most simple and ordinary examples generally command a price of between £300-£500, at which level we contend that no criminal will choose to purchase a sword when firearms are known to be commonly available at that same price or less.

3. The Home Office representatives stated that at no time had it been their intention to legislate against genuine antique or collectable Japanese swords, (antiques being already the subject of exemptions to existing laws governing the legal possession of swords). They shared our opinion that replicas or reproductions, through their easy availabilty and extremely cheap cost, were the root cause of such cases as had been the subject of reports of swords used in crime.

4. Whilst intending to focus forthcoming legislation against these replicas the Home Office also intended that exemptions be made for genuine swords and invited our advice on how such exemptions could be framed. We offered a technical definition of genuine Japanese swords of all periods, including present Art works being produced by current accredited Japanese sword smiths, which would further clarify their exempt status and explained our reasoning.

5. A discussion on the subject of licensing resulted in agreement between all parties that licensing of individual collectors was undesirable, and that self-regulation by organisations would be largely unworkable and unenforceable. The Home Office expressed their preference to allow the recognised exemption of genuine swords to define the equally exempt status of their owners.

6. We explained the necessity of maintaining the right of any individual or organisation to freely import, export or trade in genuine Art swords in order to improve the quality of both private and public collections. It was accepted that this is the case in every other field of Art and that by accurately defining the status of genuine swords as exempt from the proposed legislation, the question of import/export controls would cease to be at issue.

Obviously during the course of our talks many other matters were touched upon but these are the main points upon which we discovered we were in agreement.

The essential task in hand here is to address the real problem of armed crime by legislating against cheap and easily available reproduction weapons of no technical or artistic merit whilst avoiding unwanted and unnecessary effects upon the quite different aspect of historic, valuable art objects.

In general the Home Office preferred to accomplish this by providing the above mentioned exemptions to whatever form future legislation may take.

The first drafts of the proposed legislation against replica and reproduction swords are, we believe, now in preparation in the hands of Government Constitutional Lawyers, and we anticipate further consultation with the Home Office prior to its general publication in order to assist in checking the technical accuracy of the document.

We extend the same offer of consultation to the Justice 2 Committee and would welcome the opportunity to address these matters in your consultation process.

SUBMISSION FROM MR JAMES REILLY

Thank you for the chance to offer an opinion in respect to the above legislation. My comments are confined to, two specific provisions, outlined in the Bill; the ban on the sale of swords and the mandatory licensing scheme relating to the commercial sale of swords and non-domestic knives.

I remain unconvinced as to the need and form of the two provisions in the legislation you propose, they are in my view, disproportional, and target the wrong people. I'm also suspicious as to the interpretation of the 'Tackling Knife Crime' consultation.

Clearly there are many justifiable reasons to own and/or purchase a sword or knife. I believe most reasoned people would accept this and I note that the Bill allows for it. But I am confused by the use of the word 'ban' in the provision. You are not banning the sale of swords because, quite rightly, people will be able to purchase them for; 'religious, cultural or sporting purposes'. The use of the word 'ban' in the provision is in my opinion misleading and should be removed. It would be better to say that the provision 'attempts to restrict the sale and purchase of swords for specified religious, cultural or sporting purposes'.

You also wish to introduce a mandatory licensing scheme for the sale of 'swords and non-domestic knives'. My opinion has always been that, knife crime, is cultural and individual specific, the criminal use of offensive weapons is not restricted to non-domestic knives, and even if it was, I cannot see how this licensing scheme will have any effect on this type of crime. I think also that this provision will, undeniably, burden small business and local councils with yet more bureaucracy and expense. In short I do not see the means as justifying the end.

My final comments concern the 'Tackling Knife Crime' consultation process and the '5 Point Plan'. I think it improbable, that a plan, any plan, put through a fairly conducted consultation process, could remain, intact, as this one appears to have. Before the consultation process the First Minister proposed his '5 Point Plan' and afterwards it apparently emerges unscathed and ready for implementation! Of course, if you accept as I do that the use of the word 'ban' is inappropriate or wrong in the sale of swords provision then the First Ministers '5 Point Plan' would now be a '4 Point Plan'. I wonder then if the word 'ban' is here for political consumption only?

SUBMISSION FROM SHERIFF FIONA REITH QC

I am submitting these observations to the Justice 2 Committee at the request of Professor Sandy Cameron, Chairman of the Parole Board for Scotland.

Although I am a Sheriff at Glasgow, and am therefore able to make observations on the Bill from the perspective of a sentencer, I am also able, as a member of the Parole Board for Scotland, to make observations from that additional perspective. However, my observations are purely personal and are, in particular, not made on behalf of Sheriffs generally.

Clause 6: My comments are as follows.

Setting the level at which these complex provisions come into operation at 15 days seems very low. The Sentencing Commission had recommended, subject to certain exceptions, setting the level at 12 months. I note that clause 27 provides that release is to be subject to a "supervision condition" *inter alia* if the person is a "custody and community prisoner" serving a custody and community sentence of 6 months or more. This is also mentioned at para 24 of the Policy Memorandum accompanying the Bill. It therefore seems reasonably clear that, in relation to offenders sentenced to under that period (which will be most offenders at summary level), the licence will probably contain only one condition, namely "to be of good behaviour and to keep the peace". This is effectively confirmed at para 25 of the Policy Memo, which states that such a condition would "…put the onus on them to take control of his or her life and not re-offend." The first point to make is that, if there is to be no supervision, some might question what the real point is of a "community part". The second point is that an obvious problem, to which offenders will get wise very quickly, is that the Bill does not appear to provide for any compulsitor to signal that a licence either limited to or including such a condition would have any real credibility.

One obvious way to provide credibility to back up such a condition would be if an offender knows that he or she is liable to have the unexpired portion of his or sentence re-imposed if they commit a further offence in the relevant period. However, section 16 is to be repealed, with nothing comparable being substituted.

Another way of providing some sort of credibility might have been to include a provision similar to that provided for in terms of section 27 (1) (b) of the Criminal Procedure (Scotland) Act 1995 so that there could be something similar to a "bail aggravation" (a "licence aggravation"?) in the event of a new offence being committed during the licence period.
A reading of the provisions for revocation contained in clauses 31 to 34 of the Bill discloses that, even although in terms of clause 31 (1) and (2) of the Bill, Scottish Ministers must revoke a licence *inter alia* if a prisoner breaches a licence condition or if they consider that the prisoner is likely to breach a licence condition, it then transpires from clause 33 (2), (3) and (4) of the Bill that the Parole Board must then release such a prisoner unless it determines that the prisoner "would, if not confined, be likely to cause serious harm to members of the public". This is a higher test than that currently provided for in terms of Rule 8 of the Parole Board (Scotland) Rules 2001. I refer to my comments below in relation to clauses 8, 10 and 13. The new test is similar to (but arguably more restricted than) that at present applicable only to extended sentence prisoners. I would therefore expect a high proportion of prisoners to be re-released at this stage even if they have committed a further offence in the licence period. It therefore appears that there would be the potential for quite a cumbersome and expensive "revolving door" system, which the offenders would soon know would see them re-released unless the high test was met whenever they were recalled.

Another question arising as a result of setting the lower limit for application for the new provisions at 15 days is how both the courts and the Parole Board are to cope with dealing with (a) the possible provision by sheriffs of reports to the Parole Board to enable the Board to deal with referrals to it and (b) the processing of cases by the Board, which it seems likely will increasingly require oral hearings (certainly once the custody part set by the court has expired). This is because the relevant periods, such as the three-quarter point of a sentence, will obviously be reached quickly in the case of short sentences.

It is not clear how the provisions of clause 6(3) and (4) of the Bill are to interact with, for example, sections 204 and 207 of the Criminal Procedure (Scotland) Act 1995. Those two latter sections provide that imprisonment or detention cannot be imposed without the court first obtaining reports including information about such things as the offender's circumstances and character. Not infrequently, this includes information about progress, or otherwise, in relation to such things as other existing or former community disposals. This sort of information is highly relevant to a determination of whether there is any alternative to custody. One might have thought that such information would also have been relevant to a determination of the extent of the custody part as well. If someone has a bad track record of compliance, the court might be assisted in coming to a view about the appropriate length of the custody part relative to the community part.

However, in terms of clause 6(3) of the Bill, the court is directed that in fixing the custody part it may only take into account the matters specified in clause 6(4). These matters are very restricted and do not even include the offender's circumstances and character. If the court has decided upon custody and it does not require to obtain reports in terms of sections 204 or 207 of the 1995 Act, it therefore looks as though it can proceed to fix the custody part with reference simply to the restricted matters set out in clause 6 (4). I wonder whether that is really intended? On the other hand, it has to be said that if the court had to obtain reports every time it was proposing to impose custody (even if the offender was over 21 and had previously had custody), this would have enormous implications for social workers having to prepare many more reports. It would also lead to significant delays in the courts pending the preparation of such reports, which might well be thought to be less than desirable, particularly in relation to summary proceedings. In that event, if reports were being called for solely with a view to fixing the length of the custody part, such offenders would probably have to be remanded in custody as well.

Sub-clause (4) (a) does not provide for a situation where there is a roll-up of two or more complaints falling for sentence at the same time. As presently drafted, the offences have to appear on the same indictment or complaint. Roll-ups of separate complaints are common. In addition, in some cases the charges must appear on separate indictments or complaints for technical reasons. The obvious example is when someone is appearing on indictment or complaint for dangerous driving and on another indictment or complaint for driving whilst disqualified. As presently drafted, offences appearing on such separate indictments or complaints would not fall under either sub-para (a) or (b). The provision could therefore usefully be amended to enable the courts to avoid a situation of unreality and thereby injustice.

In para 44 of the Policy Memorandum it is observed that there will be no equivalent of section 16 of the 1993 Act enabling the court to re-impose the unexpired portion of a sentence. However, the para goes on to say "there would be nothing to prevent a court from taking into account the fact that an offence had been committed during the service of the community part of a previous sentence when imposing any sentence for the offence". Two points arise here. The first is that, at present, schedules of previous convictions record when section 16 has been utilised. The court can therefore see the offender's track record in that respect. Unless new schedules of previous convictions specify precisely when the community part of a previous sentence commenced, the new sentencing court – or any subsequent sentencing court - would not be able to see this. The second point is that, although such an occurrence might be thought relevant to the selection of the appropriate length of the custody part of a later sentence, the "matters" set out in clause 6 (4) do not include the scenario envisaged in para 44. Consequently, it seems to me that clause 6 itself would, as currently framed, prevent a court from taking this into account in relation to the fixing of the custody part. In the light of what is said in para 44 of the Policy Memo, I wonder whether this is really intended?

This problem could perhaps be addressed by framing clause 6 (3) of the Bill to the effect that the court is to take into account such matters as it considers appropriate, including "without prejudice to the foregoing generality", the matters set out in clause 6 (4), which itself could usefully be amended to include the situation of roll-ups being dealt with at the same time. On the other hand, the problem about that would be that this could then lead to pressure being put on sheriffs to obtain reports for this purpose even when not otherwise required, with attendant delay and expense involved for both the courts and social workers.

The maximum custody part is to be three-quarters of the overall sentence, irrespective of whether the offender has a track record of ignoring court orders. The obvious example is repeat disqualified drivers. It is not at all unusual to see offenders with numerous previous convictions under section 103 of the Road Traffic Act 1988. With the new provisions, the maximum custodial part, on indictment, will be reduced from 12 months to 9 months. There is then the difficult question of any discounting for an early plea. If one is still supposed to give a one-third discount (whether that should be to the overall sentence or to the custodial part is unclear, although I note that there is in clause 6 (4) of the Bill specific reference to section 196 of the 1995 Act as being one of the "matters" to be taken into account in fixing the custody part), that could result in a 6 month custodial part on indictment for even the worst section 103 repeat offender and in relation to whom the minimum 25% community part may well be a complete waste of time. As I have already mentioned, a consequence of the new provisions is that a breach of a condition of a licence to be of good behaviour will only lead to such an offender potentially serving the unexpired portion of his sentence if the Parole Board is satisfied that he would be "likely to cause serious harm to members of the public". If that test is not met, unlike the position at present when they know they are facing section 16 of the 1993 Act, there is no effective compulsitor to make any breach of such a licence condition meaningful.

Clauses 8 ,10 and 13: My comments are as follows:

The test is to be similar to the current extended sentence test. It might however be noted that the extended sentence test refers to the protection of "the public from serious harm" whereas the wording throughout this Bill refers to a likelihood of the prisoner causing "serious harm to members of the public". It will doubtless be for discussion whether "members of the public" means the same as "the public". This is in any event higher than the test set out in Rule 8 of the Parole Board (Scotland) Rules 2001. The Rule 8 test includes reference to the commission of any offence or causing "harm" to any other person. Some might think that the public may well be concerned about even "moderate" harm. That will now be excluded. It is not clear to me whether someone who is repeatedly causing serious harm to property would fall within the ambit of the new provisions. It is likewise not clear to me that someone such as a repeat section 103 offender, or a repeat shoplifter or vandal, would fall within these provisions.

In relation to clause 10 (2), it is not clear what the Parole Board is to do if an adjournment is sought for good reason and in the interests of justice, even at the instance of the prisoner, which would take to period beyond the expiry of the custody part.

Clause 12: The provisions contained in clause 12 (3) and (4) are less than easy to follow.

Clause 14: My comments are as follows:

I have already referred, in the context of clause 6, to the problems I can see problems arising in relation to the short timescales inevitable associated with short sentences. As a member of the Parole Board, I am aware just how important it is that the Board has a report from the trial judge or sheriff as this is the only source for a reliable account of the offence concerned, and what was the offender's position was at that time. Indeed, it is sometimes the only account at all of the offence. Not infrequently, the dossier does not even include a copy of the indictment in the case or the actual terms of any conviction or guilty plea. On the other hand, I am also a sentencer. I am therefore equally well aware that there would be significant time and resource implications if sheriffs had to prepare reports in all custody cases of 15 days or more as opposed to the current dividing line of 4 years and extended sentence cases. For example, the loading of the remand court in Glasgow is regularly in excess of 30 cases each day. I therefore foresee very real difficulties if the position was to be that reports were to be sought from sheriffs in all custody cases

of 15 days or more. However, it is not at all clear in just what categories of cases reports would be being sought from sheriffs.

The Bill does not provide the court with any discretion in relation to the community part. There are many cases, section 103 cases being as good an example as any, in which the offender's track record shows that he simply never complies with any court orders or conditions. Because of the way in which breaches are proposed to be dealt with, there is a risk that some might think that offenders such as these would in effect be benefiting.

Clause 15 (3) and (4): There is the same restricted list of "matters" as in clause 6 (3) and (4).

Clause 17: My comments are as follows.

At para's 14 and 31 of the Policy Memorandum it is said that the arrangements for life prisoners will not change and that the provisions of the existing law are re-enacted in the Bill. Looking at clause 17 of the Bill (and indeed clause 33 of the Bill which deals the question of re-release after revocation of a life licence), this does not appear to me to be entirely correct. An examination of this provision appears to indicate that there will be changes. This is because the effect of both this clause and clause 33 is to replace the present test (in section 2(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993) applied by the Parole Board when considering release of life sentence prisoners with the test similar, but not identical to, that at present applicable to extended sentence prisoners. The extended sentence test refers to the protection of "the public from serious harm" whereas the wording throughout this Bill refers to a likelihood of the prisoner causing "serious harm to members of the public".

At present, section 2(5) of the 1993 Act provides that the Parole Board "shall not give a direction (to release a life prisoner on licence) unless the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined". The Board needs to be satisfied that the prisoner no longer represents an unacceptable risk of physical danger to "the life or limb of the public": *Henry v Parole Board* 2004 WL 413091; *Stafford v United Kingdom* (2002) 35 EHRR 1121. There is an argument that, in case of doubt, the onus is in effect on the prisoner to satisfy the Parole Board that this test is met: *R v Lichniak* [2003] 1 AC per Lord Bingham of Cornhill at page 913, letters C to D. Comparing clause 17 (3) (and clause 33 (3)) of the Bill with section 2 (5) of the 1993 Act, it is not clear what the position would be in relation to an interpretation of clause 17 (or clause 33) the Bill. That will doubtless fall to be discussed and determined in Tribunals of the Parole Board and, perhaps, ultimately in the higher courts. In para 31 of the Policy Memorandum it is commented that the current provisions and processes in relation to the imprisonment and release of life prisoners "remain fit for purpose". It was for that reason that it is then said in the same para that it is not proposed to amend the law as respects the treatment of life sentence prisoners. It is therefore not clear why clauses 17 and 33 provide for a different test rather than simply re-enacting the provisions of section 2 (5) of the 1993 Act.

Clause 27: I have already raised a question about the point of these provisions being applicable to sentences of as low as 15 days when supervision does not come into play unless the sentence is 6 months or over.

Clause 28 (2) and clause 29: It would help if there was a compulsitor to back up these provisions.

Clause 31: I have already commented, in relation to clause 6 at the 4th bullet point, about the difference in the test for revocation by Scottish Ministers as compared with the higher test proposed for the Parole Board in clause 33 when it comes to consideration of the question of re-release, and how this sets up the potential for a "revolving door" situation – the likelihood being that a large number of those whose licences have been revoked will then be re-released in short order.

Clause 33: My comments in relation to clauses 8, 10 and 13 above are equally relevant to clause 33 in so far as it relates to determinate sentence prisoners. However, clause 33 also applies to life licence prisoners. I have already commented on the new test proposed in the context of my comments in relation to clause 17 of the Bill.

Clause 34: Sub-clauses (1) and (2) do not square with clause 33 (6) which provides, as one would expect, for the Parole Board to fix a further date for review in the event that the prisoner is not re-released following revocation. As clause 34 stands at present, such a prisoner would have to be confined until the end of his sentence or, in the case of a life licence prisoner, until he dies. It is not clear what the drafter is really seeking to achieve in this section. I can see that such an offender would be "liable" to be confined until the end of his sentence (or death in the case of a life licence) but presumably this would have to be subject to his or her position being reviewed in terms of clause 33 (6).

Schedule 1 and the Explanatory Notes accompanying the Bill at Paragraph 151: Schedule 1 provides for the membership of the Parole Board to be expanded. However, para 151 of the Explanatory Notes makes it clear that it is proposed to amend the Parole Board Rules in order to provide that Tribunals will in future be limited to two members rather than three, and that in future the Tribunal will have to reach a unanimous view in each case. Two points arise here. The first point is that a real strength of the Board is the wide nature of its membership and the knowledge and resources available to it as a result of the differing qualifications and experience of Board members'. A reduction in the representation of that wide membership on Tribunals would I think only be detrimental to the decision-making process. The second point is that it is not clear whether unanimity would require to be in favour of detention or in favour of release. If there requires to be unanimity for release or re-release, it is difficult to see how it could really concluded that an offender is "likely to cause serious harm to members of the public" if one of the two members hearing the case is for release on the basis that they are not of this view.

Explanatory Notes accompanying the Bill at Paragraph 172: In the light of *R v Parole Board ex parte Smith and West,* I cannot see how re-release cases following revocation could be dealt with by other than oral hearings. Indeed, it seems to me that it is likely to follow from that rationale in *Smith and West* that any case referred to the Board by Scottish Ministers after expiry of the custodial part, on the basis that the offender is said to be likely to cause serious harm to members of the public, is going to require an oral hearing. My impression from this para is that this may not have been fully appreciated. If so, the cost implications for the Board, and indeed for Scottish Ministers if they are to be represented at such hearings, may well have been underestimated.

SUBMISSION FROM SCOTTISH FENCING LTD

We have previously made representations regarding the impact of the potential Bill on the sport of fencing in Scotland. Lord Moncreiff, a director of Scottish Fencing, has represented our views at a number of meetings with those concerned with the creation and drafting of the Bill.

We are aware that the Bill as it is presently drafted (as introduced, posted 3/10/06) would require that swords may only be purchased from vendors authorised through a "Knife-dealer's licence", and we are particularly concerned that swords used in the sport of fencing would be not be exempt. Specifically:

As the governing body charged with the responsibility for the development of the sport in Scotland we are strongly of the opinion that this requirement would be highly detrimental to the image of the sport and the willingness of parents to allow their children to participate in it. Fencing swords are not weapons designed to cause injury and we do not want our sport to be associated with activities which do use such equipment. In particular, this may lead schools to re-consider their involvement in the sport.

To the best of our knowledge Scotland would become the only country in the world to have such a constraint on the open trade of fencing swords. This would damage the reputation and status of Scotland in the international world of sport and in particular, of fencing, and would undoubtedly hinder our chances of being awarded rights to stage major international events.

We are strongly of the opinion that the requirement for licensing of vendors would impose damaging limitations on common practices whereby fencing clubs (including schools and universities) and coaches act as sales intermediaries between vendors and pupils. Clubs and coaches also regularly lend equipment to fencers and as such would be required to comply with the conditions imposed on vendors.

We are further concerned that vendors will find the impositions of the licensing process – which we understand are, as yet, undefined and will be within the discretion of local authorities – to be onerous and may cause them to consider their trading position in Scotland. Whilst we are sure the vendors will express their opinions to you directly we would stress the importance we place on maintaining a close relationship with the vendors of fencing equipment for the benefit of the sport in Scotland.

As a *quid pro quo* for granting access to vendors to Scottish Fencing competitions we get the use of competition equipment owned by them. If vendors have their freedom to trade in any way constrained they may not feel it is in their interest to continue to attend competitions and supply this equipment.

If fencing swords are included in the general classification of swords in he Bill they are, by inference, an object of the Police, Public Order and Criminal Justice Act 2005 which allows the sale of swords only to those aged 18 or over. Almost half of our membership are under 18 and it is very common that fencers – including those under 18 - purchase swords or (more likely) components of swords during competitions, usually as a matter of urgent necessity (for repairs to damaged or faulty equipment).

We suggest that all these concerns can be dealt with by considering fencing swords as objects exempt from the Bill. "Fencing Swords" can be defined as swords considered by Scottish Fencing (as the national governing body of the sport in Scotland) as complying with the rules of fencing in Scotland. Elaboration of that definition is very straightforward and could be published in a clear and unequivocal way. The definition would include the very detailed rules of the Federation Internationale d'Escrime (the international governing body of fencing) to define sword specifications (materials, geometry and so on) with a small number of additional definitions to take account of the slight differences of non-electric practice swords (not used for international competitions and as such, outwith the scope of the FIE regulations). There is no doubt that a sword manufactured or modified to have a sharp edge or a point could not meet these specifications.

We would be pleased to present this position and to provide further detail on our suggestion to any committee or other body involved in the Bill if you feel that would be useful.

SUBMISSION FROM SCOTTISH POLICE AUTHORITIES CONVENERS FORUM

I refer to the above and the previous correspondence of 3 October 2006 from the Scottish Executive inviting the Conveners Forum to offer comment upon the Bill. We have limited our comment to that part of the Bill that relates to the selling and licensing of non-domestic knives and swords.

The incidence of knife crime in Scotland is totally unacceptable, particularly the exceptionally high levels associated with Glasgow and the West of Scotland. The Conveners Forum supports the provisions of the Bill in respect non-domestic knives and swords, and recognises that while this may place some difficulties for those with legitimate reason to possess such weapons, such is the scale of the problem that it is absolutely essential to make every effort to disrupt the current availability of non-domestic knives and swords to those who would intend to use them for criminal means.

In offering support to the Bill, however, there are some issues to which we would wish to offer specific comment. These are;

Verification of the identity of a purchaser
Paragraph 114 of the Policy Memorandum indicates that local authorities will be able to specify the means by which identity should be established, e.g. by photographic means or utility bills. We would argue that means of identification should be of the higher standard, by such photographic means that guarantees verification of a person's identity.

Purchase of non-domestic knives or swords over the internet or by mail order
The Bill creates an anomalous situation in respect of purchases made over the internet or by mail order. Where the place of distribution is in Scotland, the seller will require to be licensed by the relevant local authority. This obviously does not apply where the origin of dispatch is in England or outwith the United Kingdom. We recognise the difficulty within this area where individuals are not licensed in respect of possession, but feel that this has the potential to be perceived as a loop-hole that may subsequently be exploited by those seeking to purchase such weapons for criminal means.

Local & Craft Fairs
We have been made aware that within rural areas of Scotland, when there are local or craft fairs, that vendors from England have been present who may offer for sale such items of non-domestic knives, and other implements, that would fall within the future licensing requirements of legislation subsequently enacted by the Bill. In order to prevent such otherwise legitimate vendors falling foul of Scottish licensing requirements, there would need to be sufficient awareness generated within appropriate trade magazines and the media in England to timeously make such vendors aware of the additional conditions that will be placed upon them should they wish to continue their business selling non-domestic knives etc. in Scotland.

I trust that this information will be of assistance to you.

SUBMISSION FROM THE SHERIFFS' ASSOCIATION

The Council of the Sheriffs' Association does not consider that the provisions of this Bill will achieve the objective of delivering clarity and transparency in sentencing.

The Council recognises that the policy and policy objectives of the proposed legislation are for the Executive and Parliament and not for the Association. However, the Council has serious concerns about aspects of the proposals for the implementation of the policy and policy objectives.

The Council has no difficulty with the proposal that sentencing judges will have a role in setting the custody part of sentences of imprisonment ("custody and community sentences") and recognises that this role may, to a certain extent, make the process more transparent. However, in relation to transparency, clarity and certainty the Council has concerns about the role of the Executive and the Parole Board in reviewing and altering the custody part, as well as determining the conditions of community licence. The Council also has concerns about the operation of the Bill's provisions in relation to the judicial decision-making process.

So far as the judicial decision-making process is concerned, we note that in deciding on the appropriate custody part the sentencing judge will not be permitted to take into account a factor that has customarily figured commonly in the judicial sentencing process. Clause 6 (5) requires the sentencing judge in specifying a custody part "to ignore any period of confinement which may be necessary for the protection of the public". That appears to suggest that risk of re-offending is not be a factor that may be taken into consideration. Indeed the Explanatory Notes (Para.16) state in relation to subsection (5) – "The question of risk (or the protection of the public) will be assessed during the custody part and, if necessary, will be decided by the Parole Board."

The Policy Memorandum states that "Public protection is of paramount importance" (Para.7). The protection of the public is a factor to which sentencing judges have customarily attributed high importance in determining the appropriate sentence to impose. The question arises of whether it is the intention of this proposed legislation to remove that factor from the judicial sentencing process.

It is not clear how the provision of clause 6(5) would affect the sentencing process so far as concerns the selection of a custodial sentence, rather than an alternative to custody, or as regards the setting of the overall "headline" sentence of "imprisonment". Nor – in relation to the setting of the "custody part" - is it clear how the provision sits with the requirement in clause 6(2) to set the custody part as the appropriate period to satisfy the requirement of deterrence. Assuming this to be a reference to individual and not general deterrence (although this is not made clear), it might be thought that the sentencing aim of deterrence involves protection of the public (from further offending by the offender) and that the sentencing judge's assessment of the period of custody

appropriate to deter the particular offender from re-offending may require to involve assessment of risk of re-offending as a factor in that calculation.

There may be a further difficulty for sentencing judges in calculating the appropriate sentence, created by clause 6(4)(c). If the intention is that the provisions of section 196(1) (a) and (b) of the 1995 Act, in conjunction with the case law from the case of *Du Plooy v HM Advocate,* should operate in such a way that any proposed increase in the custody part (in terms of clause 6(3)) is to be reduced in recognition of an early plea of guilty, does this mean that the sentencing judge in such circumstances is to give an offender the benefit of a double discount, with both the overall "headline" sentence and the custody part being reduced ?

The point about double application of the same factors would also seem to apply to the other matters relevant to the imposition of a higher custody part in terms of the proposed section 6(3) and (4). The seriousness of the crime and the accused's record are likely to be taken into account in setting the overall "headline" sentence as well as being matters relevant to specifying a custody part that is greater than half of the overall sentence.

As we have said, the policy of the proposed legislation is a matter for the Executive and not for this Association. In fact we have no difficulty with what is stated in the Policy Memorandum about creating a transparent sentencing regime that will improve public confidence and provide transparency and certainty for victims. However, we do not believe the proposed legislation will achieve that and we think it appropriate to offer comment because we believe this will create difficulties for the judiciary, as well perhaps as for victims and the public. Although the custody part of a sentence of imprisonment will be imposed and announced at the public sentencing hearing, it will not be possible to predict or state at that time what the duration of the period that will actually be spent in prison will turn out to be or what the conditions of licence during the community part of the sentence will be. The only part of the sentencing process that will be in public will be this hearing. This situation would not appear to be conducive to or consistent with a policy of clarity, certainty and transparency, and it will create a difficult situation for the sentencing judge at the time of sentencing.

Although there is no specific provision to this effect in the Bill the Policy Memorandum states that "the court will explain the consequences of the combined structure when imposing sentence." (Para. 11) Is not clear how that is to be achieved, in the absence of specific statutory provision. However, such an explanation may present a difficult task, so far as clarity and certainty are concerned.

An example of the sort of explanation that may require to be given follows. It supposes a sentence imposed by a sheriff on indictment in respect of a crime of assault to severe injury and permanent disfigurement in a case where a plea of guilty has been tendered at the First Diet.

> Sheriff – "The sentence of the court is a sentence of imprisonment - that is a custody and community sentence - of three years. The sentence takes account of your early plea of guilty, in accordance with the requirements of the law. It would otherwise have been a sentence of four years, but a discount of one quarter has been given.
>
> The custody part of your sentence will be one half - that is eighteen months - in accordance with the relevant statutory provision. I consider that to represent an appropriate period to satisfy the requirements for retribution and deterrence. In specifying the custody part I have been required by statute to ignore any period of confinement which may be necessary for the protection of the public, and I have not therefore taken into account the risk of you endangering members of the public by re-offending.
>
> I cannot tell you (or your victim or the public) at this stage whether you will in fact actually spend 18 months in prison. It is open to the government to release you from prison on curfew licence before you have served 18 months. It is also open to the government and the Parole Board to delay your release from prison beyond the expiry of 18 months. The period of imprisonment may be extended up to a maximum of 27 months if the government and the Parole Board consider that you would, if not confined, be likely to cause serious harm to members of the public.

> Part of your sentence will be served on community licence. In terms of the sentence I have imposed the period in the community on licence will be for one half of your sentence – namely 18 months. However, you will appreciate from what I have just said that it may turn out to be for more or less than that. I cannot at this stage tell you what the conditions of your licence will be when you are serving the community part of your sentence. These conditions will be set by the government or the Parole Board. If you breach the conditions of licence your licence may be revoked and you may be re-imprisoned, although you will not be further detained if the Parole Board determines that you would not, if not confined, be likely to cause serious harm to members of the public.
>
> This is the only public hearing at which your sentence will be announced. I hope the consequences of the combined structure of your sentence are clear to you."

As regards early release on Curfew Licence, we note that the Policy Memorandum makes clear (in Para.36) that the Bill re-enacts the arrangements introduced through the Management of Offenders etc (Scotland) Act 2005, known as Home Detention Curfew. These measures are seen as providing "a useful incentive in appropriate cases", but would be subject to strict controls, prescribed in the Bill, such as the exclusion of high risk offenders and sex offenders. Clarification of clause 36(1)(b) would be helpful, as regards its meaning and the Executive's intentions.

The Council would also wish to comment on the question of reports by sentencing judges, which has been raised in comments submitted by Sheriff Reith QC, who is a member of the Parole Board. The need for such reports is very limited at present, particularly so far as sheriffs are concerned. Reports are mainly required in cases where a custodial sentence of 4 years or more is imposed. (They are also required where a consecutive sentence is imposed which takes the accused into the category of a long-term prisoner or where a supervised release order or extended sentence takes the overall sentence into the 4 years or over category.) It is unclear what implications the proposed new statutory provisions may have for the provision of reports by sentencing judges. The Council would strongly oppose any suggestion that sentence reports should routinely require to be provided by sentencing sheriffs as a result of this proposed legislation. Any such requirement would add an unacceptable additional burden to the work of sheriffs and would be quite disproportionate to what would be likely to be the actual need for reports. We would expect that the number of cases in which the Executive thinks it appropriate to refer the sentence to the Parole Board would be only a small proportion of the total number of cases in which a custody and community sentence is imposed. In any case, as noted above, the matters to be taken into account by the sentencing judge in deciding whether it is appropriate to set a longer custody part are not to include any period which may be necessary for the protection of the public (clause 6 (5)). The test for consideration of denial of release at the end of a custody part that is less than the maximum will be the protection of the public (from serious harm). There should therefore be no need for any reports from sentencing judges, as the criterion for consideration of refusal of release at the end of the original custody part will be one that the sentencing court will not have considered (or indeed been permitted to consider).

The Council would also associate itself generally with the other comments submitted by Sheriff Reith, so far as relevant to the interests of sheriffs, including those relating to the abolition of the power of the court to decide to require an early-released re-offender to serve the unexpired portion of the sentence.

SUBMISSION FROM SPORTSCOTLAND

Thank you for your letter of 10 October inviting **sport**scotland's views on the above Bill. **sport**scotland are pleased to respond and wish to thank the Committee for the opportunity to do so.

The parts of the Bill, which are relevant to sport are the provisions relating to the ban on the sale of swords, except for certain legitimate purposes and the requirement for those dealing in non-domestic knifes etc to hold a knife dealers licence.

Ban on Sale of Swords

sportscotland are content with the provisions of the Bill relating to the ban on the sale of swords, except for those purposes specifically recognised as a legitimate pursuit. We consider such a ban will not unduly impact on the ability of someone to purchase a sword in order to participate in a legitimate sporting pursuit.

Licensing of Dealers

sportscotland are content with the provisions of the Bill requiring those whose business is that of a dealer in non-domestic knives or swords to hold a knife dealers license. The Bill also contains provision requiring the licensing of any dealer who has a distribution operation only in Scotland and we are also content with this provision.

However, the Bill is not clear whether a retailer, or their agents, will require only one licence or multiple licences for every local authority area in which they trade. **sport**scotland would have serious concerns about the impact of the latter on sport in general but in particular the sport of fencing.

For background, there are very few dealers in Scotland of fencing equipment and some degree of sales take place via the internet or through tele-sales. However, a significant amount of trade is done through retailers selling at fencing competitions throughout Scotland, providing competitors with replacement blades and access to other equipment. For fencers, the type, weight and balance of blades is as important to them as, say, tennis racquets are to tennis players.

If multiple licences were required then a retailer will require thirty-two separate licences, all with possibly different conditions attached. Given the small scale of the fencing related market in Scotland we consider that the retailers who do operate currently from a single site in Scotland would be highly unlikely to apply for thirty two separate licences, due to the bureaucratic and financial impact on their business. If this were to happen, there would be very serious implications for the sport of fencing in Scotland.

- There would be a lack of availability of spare blades to competitors in fencing competitions and a restriction on the ability to purchase equipment.

- Scottish Fencing currently attracts income from vendors, who pay the governing body a rent in order to secure a retail site at fencing competitions. Any unreasonable licensing condition or a requirement to hold thirty-two licenses will inevitably lead to limited or no attendance from vendors with a consequential drop in income for what is not a big sport.

- Competitors from overseas rightly expect a degree of access to spare equipment, particularly blades, when attending Scottish competitions. It is unreasonable to expect overseas competitors to carry an endless supply of blades to competitions abroad. A lack of vendors at Scottish competitions will lead to a drop in the status of Scottish fencing and a decrease in the number of overseas competitors.

sportscotland would welcome clarification on the multiple licence requirements with a view to securing a position that where a vendor held a bona fide licence for one Scottish local authority, then that licence would be sufficient to meet the requirements of all Scottish local authorities.

S 27A (3) (e)&(f) 'lending' or 'giving'

The Bill in its current form indicates that a non-domestic knife or sword dealer includes persons carrying out a business which includes the 'lending' or 'giving' of swords. **sport**scotland is very concerned that this provision in its current form would have potentially devastating implications for the sport of fencing, or indeed any sport where a coach of a club who earned income from coaching allowed new entrants to the sport to borrow equipment. It is highly improbable that a new entrant to a sword sport would own or posses a sword when taking up the sport.

In particular, in the sport of fencing the majority of coaches in club and school situations derive income from coaching, usually by teaching at a number of community clubs and schools. Were it to

be the case that these coaches were to require licences or, even worse, multiple licences, this would have the potentially devastating effect of driving away coaches from the sport. At a time when sport is not finding it any easier to attract volunteers and activity leaders, and to develop those persons in to coaches, the effect may well be to kill the sport completely.

We understand that the Scottish Executive did not intend to require the licensing of those who merely allow participants to borrow swords for a club or school session and have them returned at the end of the session. In addition, Active Schools co-ordinators across Scotland use professional coaches as a way of introducing school pupils to the sport, where none of the participants will own equipment and the coach will provide everything. It is very unlikely that coaches would be willing to participate in this kind of activity were they to require a burdensome license. However unintentional the effects may be, they are still potentially devastating to the sport.

Given the above **sport**scotland would seek clarification on the issue of 'lending' and 'giving' with a view to reassuring those whose primary activity is coaching that they would not be required to hold a 'knife dealers' license.

sportscotland thanks the Committee for consideration of our submission and should the Committee require any further information of clarification **sports**cotland would be pleased to assist.

SUBMISSION FROM TRADITIONAL MARTIAL ARTS & BUDO KAI INSTITUTE (TMABI)

Reference 1:

The TMABI Organisation submitted Letter for *"Tackling Knife Crime ? A Consultation* Annex C - Respondee Information Form" dated 24 September 2005

Reference 2:

The Sale of Swords will be banned subject to exceptions for specified religious, cultural or sporting purposes

Reference 3:

The introduction of a mandatory licensing scheme for the commercial sale of swords and non-domestic knives, to be known as a knife dealer's licence with local authorities being the licensing authorities.

The TMABI Organisation "Written Evidence Submission" regarding the above Referenced items 1,2 & 3 are provided as per the enclosed.

Further, I wish to be considered for any Oral Evidence Sessions that may be required.

Reference 2:

The Sale of Swords will be banned subject to exceptions for specified religious, cultural or sporting purposes.

It is the view of the Traditional Martial Arts & Budokai Institute (TMABI) that exemption from the Sale of Swords ban be made for legitimate organisations for specified religious, cultural or sporting purposes.

Those with a legitimate reason, such as collectors and sports enthusiast with organisation affiliation documentation, should be able to legally indulge their sport or hobby.

The TMABI also supports a sword Registration scheme which would be issued to individuals. Proof of membership with legitimate structured organisations would assist the local authorities with properly issuing certificates / licenses. With this license an individual could purchase a sword from an authorised dealer / owner.

With this approach, **ALL** sword using Organisation **would be required** to be listed and even Licensed with the Local Authority.

Proof of individual membership would further suggest that the buyer has a working knowledge of the laws related to ownership of swords as well as sword care, safety, handling and storage.

Reference 3:

The introduction of a mandatory licensing scheme for the commercial sale of swords and non-domestic knives, to be known as a knife dealer's licence with local authorities being the licensing authority.

The TMABI also supports a sword Buy/Sell Possession Registration Certificate which would provide a traceable, track able and accountable system for the protection of all concerned. Proof of membership in a legitimate structured organisation would assist the local authorities with properly issuing certificates / licenses. Additionally, **ALL** Organisation using swords **MUST** be listed with the Local Authority.

Japan and Denmark have similar system addressing the Buying, Selling and Possession of Sword. A sword's ID Tag that MUST be attached to the bag or container housing the sword at all times. The Registration is the small white paper is laminated. (pictured) The bigger paper is document of appraisal, stating who made the sword, what time period, etc. Not all swords have appraisal docs, but all swords must be registered.

The Licensing Authority once or twice a month holds a day of registration at city hall, with several sword experts on hand. They inspect the sword to determine its authenticity, and then write down the basic details: signature (if any), length, number of mekugi-ana *(pin hole),* etc. and give it a number. The document gets laminated and given to the owner. The License Authority keeps records of who currently owns the sword. If it is sold or transferred, it is the new owner's responsibility to notify the licensing authority. The registration stays with the sword at all times.

SUBMISSION FROM WHITBY & CO

We write to you about the above Bill as Whitby & Co are the UK's leading importer and distributor of multi-tools, Swiss Army Knives, pocket knives and shooting and fishing knives. We supply 357 retail shops in Scotland. These stores include well known names such as Tiso's Outdoor, Jenners Department Store, Nevisport and Millets Outdoor Leisure.

Historically the Directors of Whitby & Co have assisted the Home Office in the production of the Criminal Justice Act 1988 in relation to Sections 139 and 141 which specifically cover the carrying of knives. Currently, the Directors are again being consulted by the Home Office about the proposed Violent Crime Reduction Bill, again with specific reference to knives.

We would support any Bill that we felt would help to reduce violent crime in Scotland, however, we feel that this Bill is fundamentally flawed in the methods by which this objective is sought. The reasons for this are as follows:

The information on which this Bill's consultation process was based was factually incorrect, which has been acknowledged by the Justice Minister's Knife Consultation Team in an email to Whitby's… "*Statistics, as is the case in the Home Office Recorded Crime, held centrally by the Executive do not distinguish the weapon used in crimes such as serious assault. As you know there are specific crimes concerned with offensive weapons such as the offence of 'having in a public place an article with a blade or point'. However knives are not identified separately from other types of offensive weapon. At present, the only regular statistical collection which includes information on the involvement of "sharp instruments" is the homicide statistics collection"*

The Ministerial Forward quoted statistics about "Number of Murders with Knives." These figures are incorrect as there is no data available that is this specific – a fact which we raised in the

consultation process. The figures available in fact show murders with sharply pointed Instruments e.g. screwdrivers, broken glass etc. – **not just knives**.

It appears that the advice of the Violent Crime Reduction Unit of Strathclyde Police is being used to formulate legislation for the whole of Scotland in the absence of proper qualitative statistics about what weapons are being used in homicides, and further, how many domestic or non-domestic knives are being used.

Looking at the statistics that are available, we again submit the following,

Table 5 Homicide Stats, Scotland (2003). It appears that the majority of offences (85%) are committed by friends/relations or other acquaintances of the victim who are often under the influence of drink or drugs (Table 7, 65%). We feel that it is not unreasonable to assume that many of these offences may have taken place in a domestic environment, probably with items close to hand. Anecdotal evidence such as the report from the Daily Record, August 17th 'OUTRAGE OVER KNIFE KILLER'S SENTENCE' shows that a large kitchen knife was used in a murder with inadequate sentencing for the perpetrator. Also, 'Cleaver Maniac Stabs Sis 20 times' Daily Record August 3rd – again, the primary weapon was a kitchen cleaver which had been brought to the crime scene.

Again it must be pointed out that your official figures show that the violent attacks that are occurring are largely confined to Strathclyde and would appear to be as a result of social ills that will not be addressed by licensing legislation. Demonising knives will not result in a lowering of murders or assaults. IF 'non domestic' knives are being used, then people will just carry some other item to defend or attack. We refer to 'Safer Scotland – Safer Streets' campaign http://www.strathclyde.police.uk/index.asp?docID=1229, it clearly shows that 798 weapons were found on 419 individuals caught. This averages out at nearly 2 weapons per person, of which 370 were **not** knives.

We feel that the Bill does not adequately differentiate between the sale of Samurai Swords and pocket knives such as Swiss Army Knives / Multi-Tools. i.e. a dealer will require the same licence to sell either product. This approach is entirely incorrect for two products that are so different.

Is it the intention of this Bill to impose licensing on every Scottish Garden Centre, DIY Store, Outdoor Actvities Store, Department Store, Gun Shop and Fishing Tackle Store, not to mention multiple retailers such as Marks & Spencers, NEXT and B&Q? All of these stores sell non domestic knives and under the current Bill would have to obtain a license. None of these stores sell swords so it seems ridiculous that they need a license to sell something as commonplace as a small Swiss Army knife, pruning knife or Multi-Tool. This is the reality of the Bill as it currently stands.

We would also question the ability of individual local authorities to cope with the burden of administrating this scheme. **There will be literally thousands of retailers who will require licensing.**

We applaud the rationale behind the desire to control the purchase and sale of Swords which are fundamentally designed as weapons. We do not understand why products that have a primary use in DIY and camping or field sports, should be subject to the same degree of control.

If it is the objective of the Bill to control the sale of Swords and large knives such as 'fantasy / movie knives' and combat type knives which are inherently difficult to define in law, surely the simplest way to deal with these products is to use a blade length criteria i**.e. a retailer would need a license to sell a non-domestic knife with a blade length in excess of 6" (15.5cm).** The Bill would then be tackling the type of product and retailer that we feel sure are the real problem in Scotland.

The above strategy would also make the overall number of outlets requiring licensing manageable for each local authority. It would take out Garden Centre's, DIY Stores and Outdoor Shops etc. concentrating only on those shops that focus on what are perceived as anti-social products with no legitimate use.

We must not forget the current statutory instruments that exist to prohibit those who may want to 'arm' themselves with a knife – whether domestic or non domestic. Namely; Section 139 of the CJA 1988 which makes it an offence to carry a bladed or sharply pointed instrument in a public place without lawful authority or good reason, except for a folding pocket knife which has a cutting edge

not exceeding 3" This primary piece of legislation when implemented correctly along with a stop-and-search policy and strong sentencing should be more than adequate to deal with a geographically specific urban problem.

The above legislation equally applies to domestic and non-domestic knives and expressly gives an exemption to small folding pocket knives which are an everyday item – which begs the question, **why should it be necessary for a retailer to apply for a licence to sell a fully legal <u>everyday</u> item that can be carried at any time in a public place without let or hinderance?**

On a practical note, the Bill will also be largely ineffective at limiting supply of knives into Scotland or controlling who is allowed to buy them as non Scottish internet retailers will simply fill the gap left in the market.

We would also draw your attention to the results of the (flawed) consultation process. Despite the error in attributing **all** murders with sharply pointed instruments to knives and despite the fact that the majority of responses were from the Police and other public sector bodies (crime reduction partnerships etc)
- the final conclusion was that 30% of respondents disagreed that licensing should be needed to sell non domestic knives and 32% agreed (38% gave no response). This does not show overwhelming support for the licensing scheme as regards knives.

The interpretation of this Bill by commentators within the rest of the UK and the world may well be such that Scotland receives a reputation as a country that is so violent that it has had to licence the sale of products as commonplace and inoffensive as the humble Swiss Army Knife. What would this mean for Scotland's vital tourism industry?

In conclusion: the evidence that has been used to promote this Bill is fundamentally flawed, the proposed Bill has a huge hole in it because it fails to address sales of domestic knives, the Bill in its present form will lead to an impossible backlog for local authorities as it will apply to many thousands of shops that we believe have never been considered as selling knives, the Bill will lead to the loss of Scottish jobs (retail staff, salesmen and agents) and creation of jobs outside Scotland (Mail order and Internet), in its present form this Bill will inevitably restrict retail supply of safety related knives for Diving, Mountaineering, Sailing and other Watersports, this may put lives at risk.

Finally and most important of all – this Bill will NOT achieve its aims of reducing violent knife crime because it does not address the root causes of such violence.

We look forward to the opportunity to discuss our amendments to the Bill with the Justice 2 Committee.

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