EXECUTIVE NOTE

DRAFT SSI: THE HOME DETENTION CURFEW LICENCE (AMENDMENT OF SPECIFIED DAYS) (SCOTLAND) ORDER 2008

1. The above Order is made in exercise of the powers conferred by section 3AA(6)(c)of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act) as inserted by section 15(5) of the Management of Offenders etc. (Scotland) Act 2005. The instrument is subject to the affirmative resolution procedure.

Policy Objectives

2. Section 15 of the Management of Offenders etc. (Scotland) Act 2005 amended the 1993 Act to introduce a new scheme of home detention curfew (HDC). This enables the Scottish Ministers to release prisoners on licence – Home Detention Curfew - under the new section 3AA of the 1993 Act.

3. At the moment, the power to release on HDC licence has been commenced only in relation to short-term prisoners serving a sentence of between 3 months and 4 years. However, by virtue of the Management of Offenders etc. (Scotland) Act 2005 (Commencement No. 4) Order 2008 (S.S.I. 2008/21), the power will also now apply to long-term prisoners serving a sentence of 4 years or more.

4. In terms of section 3AA(5) of the 1993 Act, specific exclusions will prevent certain categories of offenders, e.g. sex offenders, those awaiting deportation or subject to an extended sentence or supervised release order from being considered eligible for release on HDC. All other prisoners will be subject to a robust risk assessment process undertaken by the prison service which will take account of issues such as previous history of violence etc. The primary aim of HDC is to ease the reintegration of prisoners back into the community.

5. Section 3AA(1) of the 1993 Act provides that Scottish Ministers may release a prisoner on HDC licence. Section 3AA(3) provides that such a release may only be exercised during the period of 121 days which ends on the day 14 days before that on which the prisoner will have served one half of his or her sentence and be released or, in the case of a long-term prisoner, considered by the Parole Board for release on parole licence. This means that the current maximum period a prisoner may be released on HDC licence is 135 days (121 plus 14 days) (approximately 4½ months) and the minimum period 14 days.

6. Section 3AA(6)(c) of the 1993 Act enables Scottish Ministers to amend by order the number of days specified in section 3AA(3). The regulations amend section 3AA(3) to enable Scottish Ministers to release prisoners on HDC licence during the period of 166 days which ends 14 days before that on which the prisoner will have served one half of his or her sentence. This means that the maximum period a prisoner may be released on HDC licence is increased to 180 days (166 plus 14 days) (approximately 6 months). The minimum period will not change.

7. In accordance with section 12AA(1) of the 1993 Act, the HDC licence must contain certain standard conditions as prescribed by the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2008. In addition, the licence must include a curfew condition complying with section 12AB of that Act. The curfew condition will require the

prisoner released on HDC to remain at a place specified in the licence for a minimum of 9 hours per day. Compliance with the curfew condition will be monitored remotely by means of an electronic tag. This is over and above any specific conditions which the Scottish Ministers have included in the licence under section 12 of the 1993 Act, including any which have been recommended for inclusion in the licence by the Parole Board. Non-compliance with any licence conditions may result in the prisoner's recall to custody.

Purpose of the Instrument

8. The purpose of this instrument is to extend the maximum period a prisoner may be released on HDC licence from 135 days (4½ months) to 180 days (6 months). The minimum period will remain at 14 days.

Consultation

9. We consulted the Association of Directors of Social Work, the Scottish Prison Service, Association of Chief Police Officers in Scotland and the Parole Board Executive on the purpose of the Order prior to drafting. These agencies are currently working with Scottish Government officials to develop the operational processes which will underpin these orders.

Financial Effects

10. Serco Ltd have been contracted to carry out electronic monitoring services on behalf of the Scottish Government. The extension of HDC provisions to long term prisoners and the extension of the maximum duration of HDC from 4½ months to 6 months will incur additional electronic monitoring costs of approximately £980,000 per annum.

11. There will also be additional costs for criminal justice social work in relation supervision costs for long term prisoners granted HDC. These costs will be approximately £223,000.

12. Financial provision will be met from the Criminal Justice Directorate budget.

13. A regulatory impact assessment has not been prepared in this instance as these regulations will have no impact on Scottish businesses other than Serco Ltd who have been contracted to deliver the service in Scotland and employ staff in order to do this.

Criminal Justice Directorate
Community Justice Services Division