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Dear Colleague

CRIME AND DISORDER ACT 1998: SECTION 86

DK

Summary

1. The purpose of this circular is to explain changes, relevant to social work services, in the law on post-release supervision which have been made by the Crime and Disorder Act 1998; and to provide social work guidance on extended sentences.

Context

2. The changes in the Act:

- provide courts with the power to impose additional post-release supervision on sex or violent offenders in indictment cases through the introduction of extended sentences. The criterion for the imposition of an extended sentence is the same as for a supervised release order, namely that additional supervision is considered necessary to protect the public from serious harm from the offender following his release. An extended sentence can be imposed where the offence was committed on or after 30 September 1998.
- remove the lower limit of 12 months before a supervised release order can be imposed in indictment cases. This applies to offences committed on or after 30 September 1998. This change is designed to cover the small number of cases taken on indictment where the offence itself may not justify a sentence of over a year but where the court considers that supervision is necessary to protect the public from serious harm following the release of the offender.

- remove the power of the court to impose supervised release orders in indictment cases where an extended sentence could be imposed. In practice this means that courts will have the power to impose longer post-release supervision on sex offenders through an extended sentence than would have been possible with a supervised release order. The change affects only sex offences committed on or after 30 September 1998. Sex offences are defined in section 210A of the Criminal Procedure (Scotland) Act 1995 as inserted by section 86(1) of the Crime and Disorder Act 1998.
- affect short sentence licences in the circumstances where a prisoner has been released on licence and commits an imprisonable offence and is then made subject, on or after 30 September 1998, to an order for return to custody under section 16 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. In such a case, where the section 16 order and any new sentence are aggregated and thus form a single term of more than 6 months but less than 4 years, the prisoner will no longer be released on licence in respect of that single term (although when he is released he may still be subject to a licence in respect of his original sentence which would continue to run in parallel). This change is part of a wider change in the law relating to sentence calculation.

3. The attached guidance provides further information and interim social work guidance on extended sentences. **Authorities should ensure that both this Circular and the Annex are made available to all relevant staff.** The guidance has been prepared in consultation with local authorities, the Scottish Prison Service and Scottish Office and related interests. It is firmly based on the existing National Objectives and Standards for Social Work Services in the Criminal Justice System. Because of the risks posed by this offender group, the potential length of post-release supervision and the possibility of recalls to custody, particular emphasis is placed on continuity of social work involvement throughout the period of the sentence and on the need for close liaison and information sharing between social work services and the Scottish Prison Service at all stages.

4. It is likely to be some time before any significant number of offenders have extended sentences imposed, so it is not intended to review the operation of this interim guidance formally before 2000. The final version will be drafted in consultation with social work services and other relevant interests and integrated into the National Objectives and Standards for Social Work Services in the Criminal Justice System.

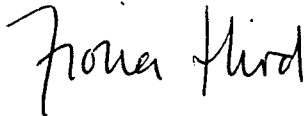
Contact Point

5. Comments on the interim guidance should be sent, before 30 November 1999, to Sharon Grant, Social Work Services Group, Room 16A, James Craig Walk, Edinburgh, EH1 3BA (Tel 0131 244 3514; fax 0131 244 3548, email Sharon.Grant@scotland.gov.uk) to whom any queries should also be addressed.

Note

6. Holders of the SWSG Circulars and Guidance Package¹ who wish a copy of the guidance should contact Peter Leslie, Social Work Services Group, Room 13, James Craig Walk, Edinburgh EH1 3BA (Tel: 0131-244-5476; fax 0131-244-3548, Peter.Leslie@scotland.gov.uk).

Yours faithfully



MS FIONA HIRD

¹ The SWSG/SWSI Circulars and Guidance Package is now available on the INTERNET. Address www.scotland.gov.uk/. Listed in Publications in the A/Z Bibliographic listing under Social Work Services Group Guidance Package.

EXTENDED SENTENCES

INTERIM SOCIAL WORK GUIDANCE

Comments on the interim guidance should be sent, before 30 November 1999, to Sharon Grant, Social Work Services Group, Room 16A, James Craig Walk, Edinburgh, EH1 3BA (Tel 0131 244 3514; fax 0131 244 3548, email Sharon.Grant@scotland.gov.uk) to whom any queries should also be addressed. The final version will be drafted in consultation with social work services and other relevant interests and integrated into the National Objectives and Standards for Social Work Services in the Criminal Justice System.

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1. Legislation

1.1 Sentencing powers

1.1.1 Section 86 of the Crime and Disorder Act 1998 introduces provisions for Scotland to allow courts to impose additional post-release supervision on licence where they consider it necessary. It does this by inserting a new section 210A into the Criminal Procedure (Scotland) Act 1995. The criterion for imposing the additional supervision (which forms part of an “Extended Sentence”) is that any existing supervision after the offender’s release from custody would not be enough to protect the public from serious harm from the offender. The Act contains similar provision for England and Wales.

1.1.2 The Extended Sentence can be imposed in indictment cases:

- on sex offenders (as defined in the new section 210A (10) of the 1995 Act) who would have received a determinate custodial sentence of any length. The Extended Sentence will replace the supervised release order for this group of offenders.
- and on violent offenders who would have received a determinate custodial sentence of 4 years or more.

1.1.3 The Extended Sentence cannot be imposed on someone where the court intends to impose an **indeterminate** custodial sentence, because such an offender will be on life licence in any case. There is no lower age limit.

1.1.4 The court must obtain a social enquiry report before imposing an Extended Sentence. The court may of course obtain any other reports it needs to help in deciding the appropriate disposal. Clearly there is an important role for risk assessment where such a sentence is being considered as the court will have to reach a view about the future risk which an offender may pose and the role which supervision might play.

1.1.5 The Extended Sentence is the aggregate of two elements - the custodial sentence the offender would have received for the offence (the “custodial term”), and an additional period of supervision on licence (the “extension period”). In calculating the duration of an extended sentence, the total period is the sum of –

(a) the duration of the custodial term (being the term which otherwise would have been imposed by a Court for the offence in question); and

(b) the duration of the extension period.

1.1.6 Whilst the “envelope” of the whole term of the extended sentence is calculated in this way, the extension period, is, for the purpose of calculating eligibility for early release, treated as commencing in the case of a short-term prisoner at the one-half point of the custodial term. In the case of a long-term prisoner, it commences at the end of the custodial term. The examples at Annex A illustrate how this would work in practice.

1.1.7 The maximum length of the extension period is 10 years for sex offenders and 5 years for violent offenders. Two other restrictions apply :

- if the sentence is imposed by a sheriff sitting with a jury, the maximum extension period is restricted to 3 years; and
- the maximum length of the whole Extended Sentence cannot exceed the statutory maximum penalty for that offence.

1.2 Recall and re-release arrangements

1.2.1 In general, the provisions are designed to treat prisoners on Extended Sentences in the same way as other prisoners on licence. The main exception to this is in the way the Parole Board considers their cases.

1.2.2 The main points are:

- Offenders serving Extended Sentences should be released either at the half way point of their custodial term in the case of people who would otherwise have been short term prisoners (example 1 in Annex A); or, depending on Parole Board recommendations, between the half way and two thirds points of the custodial term in the case of people who would otherwise be long term prisoners (example 2 in Annex A). They will then be on licence until the end of the extension period. In the case of long term prisoners this coincides with the end of the Extended Sentence. In the case of short term prisoners, they will be on licence from the one-half point of the custodial term for the duration of the extension period. They are also “at risk”, both during that period and the period from the end of the extension period until the end of the extended sentence, of being ordered by a Court under section 16 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to return to custody if they commit a further imprisonable offence. A court could also make an order under section 16 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 in relation to a long term prisoner who had committed an offence following his release at any time until the end of the extended sentence.
- If the offender fails to comply with the conditions of his licence, the Secretary of State has the same power under section 17 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to revoke his licence and recall him to custody as would be the case with any long-term prisoner.
- If an offender is recalled to custody while he is on licence, he has the right to make immediate representations to the Secretary of State who must refer his case to the Parole Board which may, providing he is not subject to another custodial sentence, order his release. If he is not released then, he can subsequently **require** the Secretary of State to refer his case to the Board (subject to a minimum gap of a year). Where he is serving another custodial sentence, the Board may direct his release only after he has fulfilled the custodial requirements of the other sentence. The Board must **direct** his release on licence if it is satisfied that his continued detention is not necessary on public protection grounds.

2. Implications for social work practice

2.1 The social work function

2.1.1 The Extended Sentence thus represents a significant development of post-release supervisory arrangements for certain high risk prisoners. The purpose of Extended Sentences is to give additional powers to the courts to reduce the level of risk to the public from such offenders, through supervision in the community, potentially over long periods of time. Supervision over a long time period will need to combine elements of risk assessment and management, oversight of the offender's activities and circumstances, the provision of practical assistance (for example, with accommodation, employment or training opportunities, financial matters), monitoring compliance with licence conditions, assistance with resettlement and reintegration, and the provision of personal change programmes.

2.1.2 The emphasis to be afforded to each of these possible components will need to be determined in the light of the changing circumstances of each case, including the preparedness of the offender to engage with social work supervision, and associated assessment of risk.

2.1.3 Extended sentences, while a new provision in themselves, demand a range of social work skills and practice experience, which has, in part at least, been developed in related criminal justice work. In particular, relevant learning can be drawn from the following:

- work with Life Licensees
- work with non-consensual offenders on Non-Parole Licence
- work with those on a Supervised Release Order
- consideration in the SER of the potential value of selective and targeted post-release supervision, through an SRO.

2.1.4 Social workers have a significant role to play throughout each phase of the process relating to Extended Sentences i.e.:

- assisting the court in assessing the potential need for, and value of extended supervision, generally through the Social Enquiry Report
- assisting the court and later the Parole Board in assessing the need for, and value of, any additional requirements in the supervision
- working closely with the prisoner, family, prison officers, social work staff in prisons and other specialist agencies or staff towards effective pre-release planning
- formally reviewing and re-affirming the supervision plan on a regular and thorough basis
- where appropriate, seeking to vary or delete specific additional requirements, or even supervision itself, through offering progress reports and updated assessments to the Secretary of State (i.e. the Parole and Miscarriages Review Division (PMRD) of The Scottish Office Home Department).

2.2 Key Practice Differences

- 2.2.1 Given the nature of the Extended Sentence and the high level of perceived risks involved, there are significant differences in the procedures to be followed for these cases. The intention of these differences is to maximise the potential benefits of the disposal **at each point of the process**. This requires an increased emphasis on continuity of needs and risk assessment, sharing of relevant information between prison and the community and across disciplines and agencies. Other aspects of practice given an enhanced profile include the involvement of first line managers, progress reporting to the Secretary of State, and increased fostering of positive family support. The allocation of a supervising officer and early determination of the supervising authority are also distinctive features.

* 2.3 Allocation of Supervising Officer:

- 2.3.1 The allocation of a Supervising Officer from the outset of the prison sentence is unique to the Extended Sentence prisoner. It is important to establish the role effectively and maintain it over the prison sentence and beyond. For that reason the initial tasks following sentence are as described later in this guidance. Inevitably, particularly with long term prisoners subject to extended supervision, there will be changes of Supervising Officer due to staff turnover or workload management issues. Where there are changes of personnel, it must be ensured that there is continuity of involvement from the local authority and that schedules of contact with the prisoner and his family are maintained.

2.4 The Supervising Authority

- 2.4.1 Similarly, to assist in continuity of assessment and risk management of this category of prisoners, the supervising authority will be designated according to "ordinary residence" principles. Where the issue is unclear or in dispute, the relevant authority will be designated on reception by the prison Governor, as that which carried out the SER or court report to which the Extended Sentence relates. It may be appropriate to change the supervising authority during the period of the sentence (see 5.3.3 below).

2.5 Role of the Supervising Officer

- 2.5.1 Given the unique nature of the Extended Sentence provision, there are several distinctive features to the role of the Supervising Officer. These include:
- regular visits to the prisoner on a 6 or 12 monthly basis, according to sentence length
 - any Home Background Report for parole purposes to be informed by such an assessment visit
 - increased contact where appropriate with the offender's family
 - particularly in cases involving long periods of supervision, an increased emphasis on the role of co-ordination and case management, especially those involving specialist input to personal change programmes.

3. Importance of information exchange

3.1.1 The Extended Sentence, in order to be effective, requires a significant level of exchange of assessment and other information between social workers in the community, their colleagues in prison units and equally, personal officers, psychologists and other specialists in prisons. This will be a particularly important feature at the following stages:

- following admission and during the initial stages of the custodial sentence
- in the context of visits of Supervising Officers
- at points of significant changes in the prisoner's circumstances, including completion of prison programmes or risk assessments
- in preparation of reports for referral to the Parole Board or other pre-release planning
- on recall or other return to custody while on post-release supervision

4. Social Enquiry Reports

4.1.1 Many of the considerations facing the SER author in respect of Extended Sentence are very similar to those in the SRO. Existing National Standards on Throughcare give detailed guidance to the SER author regarding an SRO at paragraphs 391 to 402. The issues and considerations developed there are largely applicable also to Extended Sentences and this guidance must be read in conjunction with those paragraphs. **For sex offenders sentenced to less than 4 years in custody, the courts will no longer have the power to impose an SRO - the Extended Sentence is the only means of providing post-release supervision for this group.**

4.1.2 There are two principal distinctions between the SRO and the Extended Sentence.

- the Extended Sentence is available in respect of sex offenders sentenced on indictment to any determinate period of custody, and of violent offenders sentenced to 4 years imprisonment or more.

Therefore:

- the Extended Sentence may be imposed on long term as well as short term sentences; and the length of post release supervision may be longer than the maximum which would be possible with an SRO.

4.1.3 As with the SRO therefore, it is for the court rather than the SER author to decide the appropriate period in custody and in the case of the Extended Sentence, the additional period of supervision required. The main concern of the author in this respect must be the potential need for, and value of, an additional period of supervision following imprisonment. The balance between the relative merits of an SRO, a prison sentence of 4 years or more followed by Parole or Non-Parole Licence and an Extended Sentence, are properly matters for determination by the court. The appropriate social work role within the SER is to offer the sentencer an assessment of the likely risks

posed by the individual and alert the court to the potential value of an additional period of supervision.

- 4.1.4 The policy and legislative intention for Extended Sentences is clear. Accordingly, it should form a selective, low volume but high priority criminal justice social work activity. As with the SRO, local authorities will wish to consult with sentencers regarding those circumstances in which the provision may most usefully be used. Such discussions may focus on ways in which the sentencer would be prepared to indicate that a specific assessment of the potential value of post-release supervision would be helpful, in addition to reviewing an appropriate range of other sentencing options.
- 4.1.5 As suggested above, there may be circumstances in which the court is able to indicate a specific interest in assessment of the potential value of extended post-release supervision. Where this is possible, it will assist the SER author in ensuring that appropriate consideration is given to this option within the range potential disposals.
- 4.1.6 In any circumstances, the SER author must consider a range of issues and related information, when assessing the appropriateness of extended supervision following a possible prison sentence.
- 4.1.7 The legislative restrictions are clear. An Extended Sentence can be imposed **only**:
- in indictment cases
 - on violent offenders sentenced to a determinate (fixed period) custodial sentence of 4 years or more
 - on sex offenders sentenced to a determinate (fixed period) sentence of **any** length (the same categories of offences as in the Sex Offenders Act 1997).
- 4.1.8 Thus, in cases heard on indictment and involving sexual or violent offences, the key issues for the SER author to assess will include:
- the likelihood of custody
 - the risk of re-offending
 - the likely risk of harm to others from further offending
 - whether, and if so how, an additional period of supervision following release could contribute to a reduction in the risks posed by the offender.
- 4.1.9 In order to assist in appropriate targeting of Extended Sentence, SER authors will require to assess each of the above issues in turn. This will be of particular importance where there is no prior indication of such interest from the court.

4.2 Assessing the likelihood of custody

- 4.2.1 SER National Standards make clear that each case must be considered individually. However, they suggest that the following factors indicate that custody may be more likely:
- the case is on indictment

- the offender is remanded in custody
 - the offender has previously served a prison sentence
 - the court has requested a report on suitability for CSO, or has indicated an interest in SRO (or Extended Sentence).
- 4.2.2 Other factors to be considered include the nature and seriousness of the offence, the seriousness and frequency of any previous offending, and any comments from the bench.
- 4.2.3 Some service managers and SER authors may also wish to use the Dunscore tool for assessing the likelihood of custody.
- 4.2.4 More detailed guidance on these issues is contained in the **National Standards for Social Enquiry Reports**.

4.3 Assessing the Risk of Re-offending

- 4.3.1 Past behaviour is recognised as the best predictor of future behaviour. The patterns and circumstances of previous offending are therefore significant indicators of future risk of re-offending. Research indicates the following considerations as the most reliable predictors:
- age (the younger the offender starts to commit crimes the more likely to re-offend)
 - sex (men are more likely to commit violent crimes than women)
 - offence seriousness (nature of offence, harm caused, use of weapons, Sheriff or High court etc.)
 - number of custodial sentences while aged under 21
 - number of previous convictions
 - age at first conviction
- 4.3.2 The above are **static factors** in that they will not change over time due to maturation or other processes. A number of social and personal characteristics, often called **dynamic factors**, are also associated with re-offending. Where the offender has social or personal problems that are associated with offending, these are often called **criminogenic needs**, which may be used in combination with static factors in assessing the risk of re-offending.
- 4.3.3 Factors most commonly found to be criminogenic are:
- financial problems
 - employment difficulties
 - limited education/ work/ social skills
 - poor relationships and/ or social isolation
 - negative peer pressure
 - alcohol and/ or drug misuse
 - mental health problems
 - anti-social attitudes to the law and law enforcement

4.3.4 Assessment of the likelihood of **violent offending** is further associated with:

- history of violence
- substance misuse
- mental illness

4.3.5 Mental illness alone is not a good predictor of violence, but may be significant in combination with other factors. What is clear is that environmental and situational factors play a key part in offending and that, as a consequence, the risk of re-offending will vary over time and in response to changing circumstances.

4.3.6 More detailed guidance on these issues is contained in:

- the National Standards for Throughcare (paras 391-402)
- the Effective Practice Supplement to National Standards
- The Draft Supplement to National Standards on Risk Assessment (January 1998)

4.4 Assessing the Risk of Harm

4.4.1 SER authors will require to be especially sensitive to:

- past behaviour, particularly analogous offences of a sexual or other violent nature
- an escalation in seriousness of violent behaviour
- use of offensive weapons, or violence involving stamping, kicking or repeated blows to the face, head or neck (where the nature of the assault constitutes significant risk of harm despite the absence of an offensive weapon)
- denial or minimisation of culpability

4.4.2 More detailed guidance on these issues is contained in:

- the National Standards for Throughcare (paras 391-402)
- the Draft Supplement to National Standards on Risk Assessment (January 1998)

4.5 The Value of an Extended Period of Supervision

4.5.1 If consideration of the above factors in relevant cases leads the SER author to conclude that custody is likely and that there may be value in an extended period on supervision on release, then this perceived value must be spelt out in the report itself. This may be particularly applicable to two broad categories of offender. Firstly, where the offender recognises the risk s/he is likely to pose on release and is actively seeking support to ensure relapse prevention strategies and continued supervision on release. Secondly, where the offender is perhaps markedly resistant to the prospect of extended supervision, but where the author is sufficiently concerned as to the potential risks posed. In these latter circumstances, there may be value in the provision of practical assistance on release, linked to monitoring, oversight and supervision of the offender's circumstances over an extended period of time.

4.5.2 Where extended supervision is considered as potentially useful, a restricted form of action plan, which describes in general terms the nature of the provision envisaged, can be developed. This may include a combination of activities as described below:

4.5.3 The range of likely provision will include:

- practical support and assistance e.g. help with accommodation, money matters, access to addiction services, employment/ training opportunities, help in maintaining relationships etc. to assist rehabilitation and re-integration into the community
- regular monitoring of the whereabouts of the offender throughout the extension period
- supervision of offenders, in accordance with this guidance, to maintain oversight and continued assessment as to how best to manage and, reduce risk
- access to personal change programmes, where these are required.

4.5.4 Throughout any period of extended supervision the direct level of input from the Supervising Officer may vary as needs, risks and circumstances change. The central role of oversight and case management remains constant throughout. Of particular importance will be the need to establish and maintain efficient and effective protocols for timeous information exchange, with any specialist service providing input to supervision or personal change programmes. These may include for example, addiction, medical or psychiatric services or relapse prevention programmes with sex offenders.

5. Post Sentence Responsibilities

5.1 Social Work Staff at Court

5.1.1 The importance of arrangements for the post-sentence interview of offenders by social work staff at courts, is recognised in both the existing Throughcare National Standards (paragraphs 29-30) and in more detail in the draft National Standards for Social Enquiry Reports (July 1998) (paragraphs 8.5-8.6 & 8.11). Offenders sentenced to a period of Extended Sentence should be afforded priority for this service. This will be particularly valuable in cases where the court has imposed a relatively short period of custody, together with a lengthy period on extended supervision which the offender may not have anticipated.

5.1.2 The purpose of this interview is to:

- clarify the decision of the court and in particular the nature of the Extended Sentence
- establish whether there are any immediate problems to be dealt with
- inform the offender of the availability of social work services in prison and what contact to expect.

5.2 Clerk of the Court

5.2.1 It is the responsibility of the Clerk of the Court to forward to the Governor of the receiving prison a copy of:

- the indictment;
- the previous convictions libelled in court;
- the social enquiry report and other reports such as medical reports
- notification of the imposition of an Extended Sentence. Note that the offender may also be a Schedule 1 offender - if so, this fact should also be communicated to the Governor of the receiving prison.

5.2.2 As soon as the Judge's or Sheriff's report becomes available it should be sent by the Clerk of the Court to The Scottish Office Home Department, Parole and Miscarriages Review Division, Y1 Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD. PMRD will ensure that the Governor of the receiving prison also receives a copy of the report.

5.2.3 All of the above information is needed to enable the prison to comply with its duties in relation to the parole review; to provide the prison and the Supervising Officer with the information they need for sentence planning and treatment programmes; and to ensure that the suitability of this group of higher risk offenders for home leave etc can be properly assessed in the light of all the relevant information.

5.3 Prison Governor

5.3.1 The National Standards for Throughcare (at paragraph 32) require the Governor, for all prisoners subject to mandatory supervision on release, to copy on receipt from the Clerk of Court, all relevant information to the social work unit at the prison. These arrangements apply equally to cases involving Extended Sentence. For all Schedule 1 cases, that notification shall be within one working day.

5.3.2 For all cases involving an Extended Sentence, the Governor must further notify the relevant local authority of the following:

- the full name, date of birth and last known address of the prisoner
- the court, date of sentence, offence(s) for which the offender was sentenced
- the periods of imprisonment and Extended Sentence imposed

5.3.3 For the purpose of Extended Sentence cases only, the relevant authority is that of **ordinary residence** of the offender. In cases where that is unclear or in dispute, the relevant authority shall be designated by the Governor as that which carried out the SER or court report to which the Extended Sentence relates on the advice of the prison social work unit. Where, in the course of pre-release planning it becomes clear that the extended sentence prisoner will not be released to the designated supervising authority, it is for that authority to negotiate any change in supervising authority with the other relevant local authority. The Governor may then change the designation.

- 5.3.4 This initial notification to the local authority must be accompanied by a request to appoint a **Supervising Officer** to the case. The notification, together with the request to assign a Supervising Officer, must be made within 7 days of receipt of the relevant information from court. In practice, the Governor will generally discharge the above responsibilities through the social work unit in the prison.

5.4 Social Work Unit in Prison

- 5.4.1 On receipt from the Governor of the information from the Clerk of Court, social work staff in the prison will interview the prisoner within 2 working days. The purpose of this interview is to:
- establish whether there are any immediate problems of a personal or family nature to be dealt with
 - ensure that the prisoner understands the nature and consequence of the Extended Sentence
 - inform the prisoner of the social work services available in the prison, together with an indication of what contact to expect from the unit and the community based Supervising Officer as a result of the Extended Sentence.
- 5.4.2 For Schedule 1 offenders, this interview must also combine the purposes outlined at paragraph 324 of Throughcare National Standards and SWSG Circular 11/94 and SPS Circular 60/94.
- 5.4.3 On receipt of notification of the Supervising Officer, social work staff in the prison unit will wish to ensure that s/he has copies of the relevant information they have received from the sentencing court. That information should include:
- the indictment;
 - the previous convictions libelled in court;
 - the social enquiry report and other reports such as medical reports
 - notification of the imposition of an Extended Sentence
 - the trial judge's report

5.5 The Supervising Authority

- 5.5.1 On receipt of the initial notification and request from the prison Governor, the local authority must assign a Supervising Officer to the case and inform the Governor within 7 days. Where the request has not been made direct from the social work unit in prison, intimation of the identity of the Supervising Officer should be copied simultaneously to the unit when replying to the Governor.

6. Role of the Supervising Officer

6.1 General

- 6.1.1 National Standards for Throughcare state, at paragraph 30, that "effective throughcare for prisoners and their families requires contact to be established between the

prospective client(s) and the local authority as soon as possible". Supervising officers in Extended Sentence cases have an important early role to play in establishing that contact and sustaining productive links, wherever possible, throughout the custodial term and period of extended supervision.

6.1.2 The overall aims and objectives of the work of the Supervising Officer throughout the period of custody and after release are:

- the rehabilitation and re-settlement of the offender
- the prevention or reduction of further offending
- the protection of the public from harm from the offender

6.1.3 During the custodial term, contact by the Supervising Officer with the offender's family may provide them with access to relevant services (including practical assistance), a clearer understanding of the nature and consequence of an Extended Sentence and assist in developing a more receptive attitude towards the value of supervision on the part of the prisoner. This activity has clear and positive potential in assisting the achievement of the above aims and objectives.

6.2 Initial Tasks

6.2.1 On allocation of an Extended Sentence case, the Supervising Officer must:

- notify the prison Governor of the identity and location of the Supervising Officer, with copy to the prison social work unit as necessary (**within 7 days**)
- liaise with the social work unit in prison to obtain relevant information passed from the sentencing court (**within 14 days**)
- write to the prisoner explaining the role of the Supervising Officer and the nature of Extended Sentence itself, indicating the initial level of contact with the prisoner and his family (**within 21 days**)
- unless it is clearly inappropriate from the SER, arrange to visit the family of the prisoner (**within 28 days**)

6.2.2 The purpose of this initial family visit is for the Supervising Officer to: introduce him/herself, explaining his/her role:

- outline the nature and implications of the Extended Sentence
- explain the possible nature of future contact, including preparation of Home Background Reports, pre-release planning etc.
- assess the impact on the family of, and their reaction to, the prison sentence
- extend an offer of appropriate assistance to the family in dealing with the consequences of the prison term (including access to housing or money advice, child care supports, voluntary organisations and prison visiting assistance etc.)

6.3 Schedules of Contact During Sentence

6.3.1 In Extended Sentence cases, the potential variation in both the length of the custodial period and the extended supervision itself is significant. During the custodial term the following schedule of prison visits is expected:

- in cases involving short-term prisoners sentenced to less than 4 years, a visit to the prisoner should, where the length of the period in custody permits, be made on an annual basis and thereafter as required by existing National Standards relating to pre-release planning
- in the case of prisoners where the length of the custodial term is so short that it does not permit this schedule, the prisoner must be visited on a 6 monthly or other basis, as required to fulfil the process required by existing National Standards relating to pre-release planning
- for long-term prisoners sentenced to a custodial term of 4 or more years, a prison visit must be made on an annual basis, **with an additional visit as may be required to assist in the preparation of any report for referral to the Parole Board**, thereafter as required by existing National Standards for pre-release planning.

6.3.2 Unless otherwise assessed as inappropriate due to a breakdown in family relationships, each scheduled visit to the prisoner should be preceded by a home visit to the prisoner's family, to keep up to date with the family situation and to foster positive family support. Other than in exceptional circumstances, any Home Background Report on the prisoner, either for temporary leave or parole purposes, should be allocated to the Supervising Officer.

6.3.3 Arrangements to visit the prisoner should be made in conjunction with the social work unit in prison and include a subsequent two way meeting between the Supervising Officer and social worker in the prison. Before this meeting the views of the personal officer should be sought either by the prison social worker on behalf of the Supervising Officer or by the Supervising Officer. It may be appropriate for the personal officer to be invited to attend. The purpose of this meeting is to:

- update one another as to current circumstances relating to the prisoner or his family
- agree action points as necessary following the visit
- facilitate eventual pre-release planning.

6.4 Pre-release

6.4.1 Preparation of Home Background Reports for referral to the Parole Board

The objectives, steps involved in preparation, and content of these reports is covered in detail in the Throughcare National Standards (paragraphs 140-156). For Extended Sentence cases these remain unchanged other than where indicated below. For these cases the Supervising Officer, or other author, must additionally:

- give renewed consideration to the question of risk assessment in line with the guidance offered here and in the related documents noted above
- ensure that the HBR is informed by a visit to the prisoner unless one has been made within the preceding 3 months.

6.4.2 HBR authors will wish to give consideration to the question of **additional requirements** within the extended period of supervision. While authors will have foremost in their minds the importance of managing risk, realism will be required regarding the degree to which the offender may be prepared to engage with the process of supervision on release. There will be little point in committing to an extensive change programme, involving additional conditions and resources, where the offender continues to be resistant. Authors must consider the appropriate balance of activity on supervision, involving continued risk assessment, practical assistance, monitoring and oversight of the offender and access to personal change programmes. In view of the long periods of supervision involved with Extended Sentences, it may prove most helpful for any additional requirements to be framed in enabling, rather than restrictive, format e.g. “to reside in accommodation approved by the Supervising Officer” or “to take part in specialist programmes as directed by the Supervising Officer”.

6.4.3 It should be remembered that, in the light of changed circumstances and/ or increased assessment of risk, the Supervising Officer may apply subsequently to the Secretary of State, to introduce an additional requirement as appropriate. Note that all applications go to the Parole and Miscarriages Review Division of the Scottish Office Home Department - there is no court role.

6.5 Pre-release Meeting

6.5.1 Other than where additionally specified in this guidance, the arrangements for pre-release planning of prisoners who are Extended Sentence cases should follow the general principles and procedures in National Throughcare Standards for Parole and Statutory Supervision Cases (paragraphs 109-118). In all cases, including Extended Sentence, the process must accelerate in the final 3 months of the custodial term following confirmation of the prisoners release date. Similarly, the formal pre-release meeting, convened by the social work unit in prison, must take place at least 2 weeks prior to release.

6.6 Post Release

6.6.1 The role of the Supervising Officer becomes central following the release of the prisoner. In many instances this will be the culmination of many years of preparation and repeated assessment of risks and needs. Whatever the circumstances, the initial period following release will be a testing one for the offender. It will be important to ensure that sufficient attention is paid to the practical needs of the offender at this time. Those needs will often be particularly acute following lengthy periods in custody or where the offender is returning to particularly isolated or vulnerable circumstances.

6.6.2 As indicated in section 2 of this guidance (the Social Work Function), the Supervising Officer has a delicate and important role to play in assessing the most appropriate selection or combination of input and activity to match the needs and risks presented by the changing circumstances of the offender. Given the differing length and likely variation in nature and content of extended supervision, finding the right pace at the right time will be essential. The case management role of the supervisor will be considerable, with particular importance attached to co-ordination of information and input as required from specialist resources or agencies. An enhanced involvement and support from first line managers is required. The schedules of contact below are benchmarks only, which will require to be increased as circumstances of increased needs or risks dictate.

6.7 Schedules of Contact

6.7.1 Initial Contact

The initial meeting between offender and Supervising Officer must take place **wherever possible on the day of release, and in all cases within one working day of release**. The purpose of the meeting for the Supervising Officer is as with Parole and Life Licence Supervision, i.e.:

- re-affirm the conditions of the licence
- confirm the licensee's address and check for any changes to immediate plans
- discuss and assist with any immediate needs, advising on any tasks to be done in the first week
- confirm the release plan as agreed at the pre-release meeting
- confirm the frequency of contact during the first 3 months
- arrange the time and location of the next meeting

6.7.2 First Three Months

During the first three months of supervision on Extended Sentence, the Supervising Officer must meet with the offender **at least once per week for the first month and at least fortnightly thereafter**. Of these contacts at least **one per month** must be in the form of a **home visit**. As with an SRO, the Supervising Officer must consider increase in the level of contact where there are concerns over the potential level of risk posed by the offender, and where increased contact may assist in the management of that risk.

6.7.3 After Three Months

After three months the frequency and content of contact must be determined at a formal review involving the offender, Supervising Officer and **first line manager**. This review must incorporate a full assessment of the needs of, and risks posed by the offender. That assessment will inform the revised plan for the next supervisory period, detailing the extent of or balance between the various components of monitoring compliance, maintaining oversight, offering practical assistance, providing personal change programmes. The appropriate balance of activity within the supervision must reflect the full circumstances of the case, including the preparedness of the offender to engage with the process.

6.7.4 For all cases however, the minimum level of contact with the offender must not be less than 2 per month during the first 2 years and no less than once per month thereafter.

6.7.5 For Extended Sentence cases, the re-focused supervision plan emerging from the review must be:

- committed to writing
- signed by the offender, Supervising Officer and first line manager
- retained on file, with a copy to the offender

6.7.6 **Formal reviews of progress, involving the first line manager, must take place at 3 monthly intervals during the first 2 years of supervision. Thereafter, the frequency should be as changed needs and circumstances require, but no less than 6 monthly.**

6.8 Progress/Completion Reports

6.8.1 Progress and completion reports must be provided by the Supervising Officer on the following basis:

- **Completion Reports:** to be submitted to the clerk of the sentencing court and the Parole and Miscarriages Review Division of The Scottish Office Home Department within 2 weeks of the completion of the licence period.
- **Progress Reports:** For all cases, progress reports should be sent to the Parole and Miscarriages Review Division annually, or as requested by the Division.

6.8.2 The content of all progress and completion reports must include:

- progress made on supervision, including level of compliance with any additional requirements and details of any personal change programme undertaken
- details of any warnings issued for non-compliance
- a view as to the usefulness of the period of extended supervision, together with a current assessment of risks posed by the offender.

6.9 In the Event of Recall or Other Return to Custody

6.9.1 Where an offender on Extended Sentence is recalled or returned to custody for any reason, the Supervising Officer must, whenever s/he becomes aware of the fact, ensure that a progress or completion report is made available to the receiving prison. This report will inform the sentence planning process in prison and assist initial work towards eventual re-release of the prisoner. This report should be sent to the Governor who will route it to the social work unit in the prison and elsewhere as required within 14 days of the decision to recall. Where appropriate, the Supervising Officer may, in consultation with social work staff in the prison, arrange to visit the prisoner following recall or return to custody. Thereafter, according to the status of the return or recall of the prisoner, the process of co-ordination between the home local authority

social worker and the social worker in the prison unit, may begin again in preparation for subsequent re-release.

6.10 Variation of Conditions of Licence

- 6.10.1 The Supervising Officer or the licensee may apply to the Secretary of State at any time for variation, cancellation or insertion of a licence condition. Arrangements for this are set out in Chapter 8 of National Standards for Throughcare. These arrangements allow also for the cancellation of the supervisory requirement itself. The arrangements at paragraphs 256, 257 and 258 must be followed for Extended Sentence. All applications must be made to the Parole and Miscarriages Review Division of SOHD.

6.11 Breach/ Enforcement and Transfer

- 6.11.1 While offenders are on licence, irrespective of whether this is as part of an Extended Sentence, enforcement in the event of non-compliance remains as set out in National Standards 232 to 252. However, the criterion for the imposition of an Extended Sentence - that is, the protection of the public from serious harm - needs to be borne in mind by the Supervising Officer when considering when to report to SOHD. In particular, evidence of a marked increase in the level of risk posed by an offender should be considered seriously. In this context, it should be noted that sex offenders subject to an Extended Sentence will also be registered under the Sex Offenders Act 1997 and there will thus be regular opportunities for reviewing the level of risk posed by such an offender under the guidance for that legislation.
- 6.11.2 In the case of a short-term prisoner who is released on Extended Sentence and subsequently re-offends in the "at risk" period, (i.e. when he is no longer on licence) there is no specific social work role.

7. Role of the Social Work Unit in Prison

7.1 Post Sentence

- 7.1.1 In the initial period following reception of a prisoner subject to Extended Sentence, the role of the social work unit is as described above in the section on **Post Sentence Responsibilities**. It will be a matter for resolution in consultations over the Service Level Agreement between the Governor and the host local authority, whether the social work unit in prison discharges the Governor's administrative responsibilities for Extended Sentence in practice.
- 7.1.2 Whatever arrangements are agreed in that respect, prison social work staff must interview the prisoner within 2 working days of notification of the prisoner's status. Extended Sentence prisoners may well be resistant to the idea of involvement with social work, either by way of non-consensual post-release supervision or accessing a personal social work service in prison. Nevertheless, it is important for social work staff in prison to continue to offer assistance and support the efforts of the Supervising Officer in developing as positive a relationship with the prisoner as possible. This

activity can have beneficial effects in assisting the overall aims and objectives of Extended Sentence supervision. For that reason, on a **6 monthly basis**, or otherwise in the process of planning for release or preparation of reports for referral to the Parole Board should that occur earlier, the social work unit must make a **repeated offer of assistance** to the prisoner.

7.1.3 For all Schedule 1 offenders subject to Extended Sentence, the processes in National Throughcare Standards (paragraphs 325-339) and in SWSG Circular 11/94 and SPS Circular 60/94, must be followed. The above processes include:

- continual risk assessment
- liaison with prison and other specialist staff
- liaison with community based social work
- participation in, and co-ordination of, personal change programmes as appropriate and agreed with the Governor
- arrangements for transfer to another prison.

7.1.4 Throughout the prison term, social workers in prison may have a variety of contact with any Extended Sentence prisoner. This may include, response to self-referral from the prisoner, involvement in offence focused work with the prisoner on an individual or groupwork basis, and specific tasks associated with preparation for release (including preparation of parole reports). Social work staff in prison will have an important and enhanced role for Extended Sentence prisoners, in **ensuring effective transmission of information**. This may take a number of forms including:

- liaising with the Supervising Officer as appropriate concerning personal or family matters relating to the prisoner
- liaising with personal officers, group workers, psychologists and other specialist staff as necessary to share and update developments
- passing on relevant details, including reports and risk assessments from the Supervising Officer, to prison staff or other specialist staff in prison
- ensuring that the Supervising Officer has copies of relevant prisoner information, including risk assessments and summaries of outcomes of any programmes undertaken, from personal officers, psychologists, medical officers and other specialist staff

7.1.5 Social work staff in prisons must ensure that good communication is maintained with the Supervising Officer, throughout the prison term. This will be assisted in the following routine ways:

- early liaison with the Supervising Officer, following the process described in **Post Sentence Responsibilities** above
- maintaining a 6 monthly offer of assistance to the prisoner and informing the Supervising Officer as to the outcome of that offer where changed
- facilitating the 6 monthly or annual visits by Supervising Officers, including a joint meeting between the workers for the purposes noted above

- discussing with the Supervising Officer respective assessments and conclusions in any reports for the referral to the Parole Board (by telephone, if necessary outwith the joint meetings above)
- convening and attending the pre-release planning meeting as required by existing National Standards.

7.2 Pre-release Arrangements

- 7.2.1 The role and procedures for the social work unit in prison in respect of Extended Sentence should mirror as closely as possible those for Parole and Statutory Supervision in Throughcare National Standards (paragraphs 105-118). Key elements within that process include:
- notification of release date to the local authority (prison Governor)
 - detailed planning in the last 3 months of sentence with the Supervising Officer
 - convening and recording a pre-release meeting with the Supervising Officer and other relevant parties, no later than 2 weeks prior to release
 - ensuring that the prisoner is kept informed on progress made with agreed plans.
 - arrangements in respect of Schedule 1 offenders must additionally follow the processes during sentence and in preparation for release, described in National Standards for Throughcare (paragraphs 340-343) and in SWSG Circular 11/94 and SPS Circular 60/94.

7.3 Post Release

- 7.3.1 Social work staff in prisons should have little or no further involvement with Extended Sentence cases, other than in two circumstances:
- providing clarification or corroboration of information to the Supervising Officer, offender or other party as appropriate
 - ensuring any relevant intelligence they have received from the Supervising Officer is passed to relevant prison staff in the event of subsequent recall from supervision.

Examples of operation of Extended Sentences

Example 1 - custodial term of less than 4 years: if an offender is convicted of in the High Court of shameless indecency. If the court intended to impose a custodial sentence of 2 years but considers that in addition 6 years supervision is needed for public protection, it would impose an Extended Sentence of 8 years. This would be made up of a custodial term of 2 years and an extension period of 6 years. The offender would serve 1 year in custody, and then would be released on licence, which would last for 6 years. During that period, he would be subject to recall to custody in the same way as any other prisoner on licence. If recalled, he would have the right to require the Secretary of State to refer his case to the Parole Board, which if it were satisfied that his continued detention was not necessary to protect the public from serious harm would have to direct his release on licence. For the final year of the Extended Sentence he would remain “at risk” of an order which would return him to custody (under section 16 of the Prisoners and Criminal Proceedings (Scotland) Act 1993) if he were convicted of a further offence.

Example 2 - custodial term of 4 years or more: if an offender is convicted of indecent assault and the court wants to impose a custodial sentence of 6 years but considers that in addition 8 years supervision is needed for public protection, it would impose an Extended Sentence of 14 years. This would be made up of a custodial term of 6 years and an extension period of 8 years. The offender would serve 3 or 4 years in custody depending on whether or not he got parole, and then would be released on licence, which would last for 10 or 11 years. During that period, he would be subject to recall to custody in the same way as any other prisoner on licence. If recalled, he would have the right to require the Secretary of State to refer his case to the Parole Board, which if it were satisfied that his continued detention was not necessary to protect the public from serious harm, would have to direct his release on licence. He would also be at risk of an order for return under section 16 if he committed another imprisonable offence.

ANNEX B

Glossary of terms used

Ordinary residence	<p>There is no definition of "ordinarily resident" in statute and the term should be given its ordinary and natural meaning subject to any interpretation by the Courts. The concept of ordinary residence involves questions of fact and degree, and factors such as time, intention and continuity, each of which may be given different weight according to the context, have to be taken into account.</p> <p>The meaning of "ordinarily resident" or "ordinary residence" has been considered by the Courts, and regard must be had to such cases as:-</p> <p>i. Shah v London Borough of Barnet (1983) Lord Scarman stated that "unless it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning I unhesitatingly subscribe to the view that 'ordinarily resident' refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration".</p> <p>ii Levene v IRC (1928) Viscount Cave said that "ordinary residence" connotes residence in a place with some degree of continuity and apart from accidental or temporary absences.</p> <p>(Source: SWSG 1/96)</p>
Extended sentence	A sentence which the court may impose in certain indictment cases (see section 1.1) comprising a custodial term and an extension period.
Custodial term	The custodial sentence an offender receiving an extended sentence would have had imposed, had it not been for the extended sentence. (see section 1.1)
Extension period	The period of additional post release supervision on licence imposed by a court as part of an extended sentence (see section 1.1)
Supervising Officer	An officer appointed by the local authority shortly after sentence, who has an essential role in establishing and maintaining effective contacts and sustaining productive links, wherever possible, throughout the custodial term and period of extended supervision. (see section 6)