These documents relate to the Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2 (SP Bill 46A)

POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE 
(SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES AND REVISED FINANCIAL MEMORANDUM

CONTENTS

1. As required under Rules 9.7.8A and Rule 9.7.8B of the Parliament’s Standing Orders, the following documents are published to accompany the Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2:
   • Revised Explanatory Notes;
   • a Revised Financial Memorandum.
REVISED EXPLANATORY NOTES

INTRODUCTION

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

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

PART 1: POLICE

Section 1 – Establishment of the Scottish Police Services Authority (“the Authority”)

4. This section establishes the Scottish Police Services Authority and gives effect to schedule 1 which sets out matters including the constitution, membership and staff of the Authority.

Section 2 – Duty to establish and maintain the Agency

5. This section places a duty on the Authority to establish and maintain an organisation to be known as the Scottish Crime and Drug Enforcement Agency (the Agency) which will replace the Scottish Drugs Enforcement Agency (SDEA).

6. Subsection (2) sets out the core functions of the Agency. These are to prevent and detect serious organised crime, to contribute to the reduction of such crime and to the mitigation of its consequences and to gather, store and analyse information in connection with the above. In effect the purpose of the Agency is to reduce the harm caused by serious organised crime. The function of mitigating the consequences of organised crime acknowledges that the prosecution of organised criminals is only one of the strategies that may be employed to tackle organised criminality.

Section 3 – Duty to provide the police support services

7. Section 3 provides that in addition to establishing and maintaining the Agency, the Authority must provide the ‘police support services’ set out in subsection (2). These include all the common police services currently established and provided by the Scottish Ministers under section 36 of the Police (Scotland) Act 1967, namely the Scottish Police College, the Scottish Criminal Record Office and the Scottish Police Information Strategy and also the police forensic science services. The Authority will also carry out the functions of the Scottish Ministers under Part V of the Police Act 1997 in relation to issuing criminal record certificates (other than functions which relate to the making of orders or regulations).
8. **Subsections (3) and (4)** give the Authority flexibility in the ways in which it provides these services, so that it may establish organisations, may collaborate with other bodies, and may do anything incidental or ancillary to the provision of these services.

9. **Subsections (5) and (6)** clarify the focus of the Authority and cement its direct link to the Scottish police forces. Thus, in all its activities, it must act in a way calculated to promote the efficiency and effectiveness of the police, having regard also to the contribution those services make to the efficiency and effectiveness of the wider criminal justice system.

10. **Subsection (8)** amends section 121 of the Police Act 1997 to provide that the functions of the Scottish Ministers under that Act in relation to the issuing of criminal record certificates (other than making regulations and orders) will be able to be carried out by the Authority.

### Section 4 – Strategic priorities of the Authority

11. This section gives the Scottish Ministers the right to determine strategic priorities for the Authority, after consulting the Authority, the Director of the Agency, and people who represent the interests of chief constables, unitary police authorities and joint police boards. In practice here and elsewhere in this chapter, this will mean the Association of Chief Police Officers in Scotland (ACPOS) and the Scottish Police Authorities Forum (SPAF). **Subsection (3)** requires the Scottish Ministers to publish any such strategic priorities which they make. As an example, a strategic priority may be to promote the efficiency and effectiveness of the police in Scotland.

### Section 5 – Objectives of the Authority

12. This section requires the Authority to determine its objectives and keep them under review. These objectives must be consistent with any strategic priorities determined by the Scottish Ministers.

### Section 6 – Annual plans of the Authority

13. This section requires the Authority to submit a draft ‘annual plan’ to the Scottish Ministers at least 3 months before the beginning of each financial year. The annual plan must include:

   - any strategic priorities determined by the Scottish Ministers and any directions issued by the Scottish Ministers;
   - the objectives which the Authority has determined for itself, and how it intends to meet them;
   - a statement of the financial resources that will be available to the Authority over the course of that year and how the Authority intends to allocate the funding.

14. **Subsection (4)** requires the Authority to consult people who represent the interests of chief constables, unitary police authorities and joint police boards and any other appropriate organisations in preparing its annual plan. **Subsection (5)** requires the Scottish Ministers to approve the plan either as submitted or with such modifications as they consider appropriate within 2 months of the plan being submitted to them. **Subsections (6) and (7)** require the
Authority to publish the plan once approved by Scottish Ministers and to send it to specified persons and bodies.

Section 7 – Annual reports of the Authority

15. This section requires the Authority to publish an annual report at the end of each financial year. The report must give an account of the Authority’s activities for that year and must describe the extent to which the objectives (if necessary, as modified) have been implemented.

16. Subsection (4) places a duty on the Authority to send a copy of the report to specified persons, including the Scottish Ministers. The Scottish Ministers must lay a copy of the report before the Scottish Parliament (subsection (5)).

Section 8 – Provision of information to the Scottish Ministers

17. This section gives the Authority a duty to comply with any reasonable request for information from the Scottish Ministers.

Section 9 – Liability for wrongful acts of certain constables seconded to the Authority

18. This section establishes that liability in respect of any wrongful acts committed by constables on secondment to the Authority rests with the Authority rather than the chief constable of the seconding force. This does not include constables seconded to the Agency for which separate arrangements are made under section 20. This liability provision is consistent with the current position for constables seconded on central service under section 38 of the Police (Scotland) Act 1967 to common police services provided by the Scottish Ministers under section 36 of the 1967 Act. Section 38(3B) of the 1967 provides that the Scottish Ministers are liable in reparation for wrongful acts or omissions of those constables. Special provision to deal with the liability in respect of the wrongful acts of constables is required because at common law, only constables can be sued as they are not employees. Neither this section nor section 20 makes any provision in respect of employees of the Authority, including employees who are also members of the Agency because, as the employer, the Authority will be vicariously liable for any unlawful acts committed by its employees in the course of their employment.

Section 10 – Grants

19. This section establishes that the Authority and the Agency are to be funded by grants from the Scottish Ministers. Subsection (2) requires the Scottish Ministers to specify the amount of grant which is to be used for the purposes of the Agency, and subsections (3) and (5) empower the Scottish Ministers to set other terms and conditions around the use of the funding. However, subsection (4) provides that the Scottish Ministers cannot impose terms and conditions which would impinge on the operational independence of the Agency. Subsection (7) requires the Scottish Ministers to consult the Authority, the Director of the Agency, and people who represent the interests of chief constables, unitary police authorities and joint police boards.
Section 11 – Charges by the Authority and other receipts

20. This section empowers the Authority to charge for any goods or services it or the Agency provides (for example, for training provided to non-Scottish forces or for Disclosure certificates), and requires that such income should be payable to the Scottish Ministers unless they decide otherwise in respect of any part of this income.

Section 12 – Members of the Agency

21. This section sets out who will be members of the Agency. The members will comprise a Director (subsection 1(a)), Deputy Director (subsection 1(b)), persons appointed as police members whether on secondment from Scottish police forces or directly recruited by the Authority and allocated to the Agency (sub-section 1(c)) and support staff members appointed by the Authority, (subsection 1(d)).

22. Subsection (2) gives effect to schedule 2 which sets out the provisions in relation to membership of the Agency.

Section 13 – Strategic priorities of the Agency

23. This section gives the Scottish Ministers the power to set strategic priorities for the Agency. Such priorities may, for example, cover the disruption of serious organised crime networks. These 'strategic priorities' are to be set in consultation with the Authority, the Director of the Agency, persons representing the interests of the chief constable of each Scottish police force and persons representing the interests of unitary police authorities and joint police boards.

24. Subsection (2) provides that the Scottish Ministers cannot determine strategic priorities which would impinge on the operational independence of the Agency.

Section 14 – Annual plans of the Agency

25. This section requires the Director of the Agency to prepare an 'annual plan' at least 3 months before the beginning of each financial year setting out how the Agency intends to carry out its functions and submit it to the Authority. The annual plan must include:

- the strategic priorities set by the Scottish Ministers (subsection (2)(a))
- details of any directions made by the Scottish Ministers under section 28 (subsection (2)(b))
- a statement of the financial resources that will be available to the Agency over the course of that year (subsection (2)(c))
- a statement of how the Director intends to allocate the funding (subsection (2)(d))

26. Subsection (3) requires the Authority to approve the plan either as submitted or with modifications as it considers appropriate within 2 months of the plan being submitted to it. Subsection (4) ensures that the Authority cannot make any modifications which would impinge on the operational independence of the Agency. Subsection (5) makes it clear that it is the
Director’s responsibility to publish and circulate the annual plan once it has been approved. Circulation must include those persons listed at subsection (6).

**Section 15 – Annual reports of the Agency**

27. This section requires the Director of the Agency to publish an annual report at the end of each financial year. The report must include a report on the carrying out of the Agency’s functions during that year and an assessment of the extent to which the annual plan has been implemented (subsection (2)).

28. Subsection (3) places a duty on the Director of the Agency to ensure that a copy of the report is sent to specified persons. Copies of the report sent to the Scottish Ministers must be laid before the Scottish Parliament (subsection (4)).

**Section 16 – General Functions of Director of the Agency**

29. This section provides that in carrying out functions the Director must have regard to the Agency’s annual plan but the Director will be responsible for directing and controlling the Agency. This is to ensure the Director’s formal autonomy in operational matters.

**Section 17 – Disclosure of certain information by the Agency**

30. This section enables the Agency to share with specified organisations information which it has gathered and stored for the purposes of carrying out its core functions. The specified organisations include other UK police forces, the Serious Organised Crime Agency (SOCA) and other law enforcement agencies.

**Section 18 – Powers of the Agency**

31. This section sets out the powers of the Agency. These are similar to the powers of the Serious and Organised Crime Agency (SOCA) under the Serious Organised Crime and Police Act 2005.

32. The powers include acting on request in support of a Scottish police force or other law enforcement agency (e.g. HM Revenue and Customs) in the pursuit of their functions; and cooperating with other bodies, including overseas agencies, in pursuit of the Agency’s functions.

33. Subsection (3) gives the Agency the power to provide assistance in response to requests made by bodies operating abroad. Requests by overseas authorities to obtain evidence under section 13 of the Crime (International Co-operation) Act 2003 are excluded from this provision (subsection 18(4)).

**Section 19 – Scottish Ministers’ power to modify section 18**

34. This section provides the Scottish Ministers with a power by order made by statutory instrument to modify section 18 to add, remove or amend the powers of the Agency provided for in section 18. The Scottish Ministers must consult before exercising this power. An order under
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section 19 is subject to the affirmative procedure (which means that it must be approved in draft by the Scottish Parliament before it is made).

Section 19A – Direction by Director of Agency

35. This section provides that the functions of the Deputy Director and police members of the Agency are subject to the direction of the Director. Subsection (2) provides that in giving such directions the Director must comply with any instructions given by the Lord Advocate or procurator fiscal in relation to the investigation of offences in Scotland or any instructions given by the Lord Advocate in relation to reporting for the purposes of prosecution of alleged offences. This provision follows the model set out at section 17 of the Police (Scotland) Act 1967 in relation to police constables and chief constables.

Section 20 – Liability for wrongful acts of police members of the Agency

36. This section establishes that it is the Director of the Agency who is liable in respect of any unlawful conduct by police members of the Agency. This includes both constables who are seconded to the Agency from police forces (via the Authority) and constables of the Agency who are directly recruited. This is a change from the current position in respect of constables seconded to the Operational and Intelligence Group of the SDEA as in those circumstances it is the Chief Constable of the seconded officer’s home police force who remains liable for any wrongful acts. It will however bring the Authority/Agency model in line with the current Police Authority/chief constable model whereby a chief constable is liable in reparation for the acts or omissions of constables in his force (see section 39 of the 1967 Act).

37. Subsection (2) makes it clear that whilst vicariously liable for wrongful acts of police members the Director of the Agency is not personally liable and provides that it will be the Authority who is responsible for paying any awards due under this section subject to the restrictions set out. Again, this is in line with the Police Authority/Chief constable model in section 39(2) of the 1967 Act.

Section 21 – Regulations relating to the Agency

38. This section introduces a power for the Scottish Ministers to make regulations in respect of the Agency, similar to those contained in section 26 of the Police (Scotland) Act 1967. This is intended to bring the Agency into line with police forces as regards the framework that applies to the appointment and regulation of police constables. This provision is required as police members will not be subject to police regulations made under the 1967 Act.

39. The regulations may cover such issues as pay and allowances, rank structure and promotion.

Section 22 – The police support services: modification by order

40. This section gives the Scottish Ministers the power by order made by statutory instrument to add new services, or amend or remove existing services, from the list of police support services to be provided by the Authority. Before exercising this power the Scottish Ministers
must consult the Authority, people who represent the interests of chief constables, unitary police authorities and joint police boards and any other appropriate organisation.

Section 23 – Use of the police support services

41. This section empowers the Scottish Ministers, in the interests of the efficiency and effectiveness of the police, to make regulations requiring all police forces (or a selection of them) to make use of particular police support services. The purpose of such regulations would be to avoid inefficient duplication of effort which might result if, for example, some police forces used databases provided by the Authority while others chose to develop their own. This is not an entirely new power as the Scottish Ministers currently have a similar power under section 36(2) of the 1967 Act to make regulations requiring police forces to use common police services provided and maintained under section 36 of the 1967 Act.

42. Subsection (4) requires the Scottish Ministers to consult the Authority, people who represent the interests of chief constables, unitary police authorities and joint police boards and any other appropriate organisations before using this power.

Section 24 – Inspections of the Authority’s services and the Agency

43. This section requires the inspectors of constabulary appointed under section 33 of the Police (Scotland) Act 1967 (who operate in practice as Her Majesty’s Inspectorate of Constabulary or, for short, HMIC) to carry out periodic inspections of the Authority and the Agency and to publish the reports of these inspections. HMIC already have this duty in respect of police forces.

Section 25 – Inspections of the Authority request of the Scottish Ministers

44. This section gives the Scottish Ministers the power to require HMIC to carry out an inspection, and publish a report, on the Authority (including the Agency) or any of its functions or activities. The Scottish Ministers already have this power in respect of inspections of police forces.

Section 26 – Reports on inspection: powers of the Scottish Ministers

Section 27 – Revision of inadequate action plan

45. These sections give the Scottish Ministers powers by which to secure remedial action if a report by HMIC advises that any part of the Authority or the Agency is, or is likely to become, inefficient or ineffective. The powers broadly mirror those which the Scottish Ministers have in respect of police forces. In such circumstances the Scottish Ministers are empowered to require the Authority to submit an action plan setting out its proposed remedial measures (or alternatively to modify an existing action plan if there is one) within a deadline of between 4 and 12 weeks. Under Section 27, if the Scottish Ministers consider the action plan inadequate they may inform the Authority of that fact and their reasons. In that event the Authority must consider whether to revise the action plan.
Section 28 – Directions

46. This section gives the Scottish Ministers power to make directions to the Authority and/or the Agency on any matter other than the operational matters of the Agency.

Section 29 – Transfer of staff, property etc.

47. This section gives effect to schedule 3 which is concerned with the transfer of staff and property etc. from the existing common police services to the Authority, and the Agency.

CHAPTER 2: COMPLAINTS AND MISCONDUCT

Section 31 – The Police Complaints Commissioner for Scotland

48. This section establishes a Police Complaints Commissioner for Scotland, to be appointed by the Scottish Ministers. More detail on the position of Commissioner is laid out at schedule 4.

Section 32 – Examination of manner of handling of complaint

49. This section outlines the manner in which the Commissioner can review the way in which a complaint against the police has been handled. The Commissioner is placed under a duty to keep the complainer, and any person who is serving with the police who may be the subject of a complaint, informed about the outcome of this review. Subsection (3) enables the Scottish Ministers to set out exceptions to this duty but only in certain circumstances.

50. The section goes on to lay out the process through which, following a review, the Commissioner can direct that a complaint be reconsidered. The Commissioner can direct either the appropriate authority in relation to the complaint (as defined in section 38A), or another relevant authority (as defined in section 43) to reconsider the complaint which is referred to him or her. The authority which reconsiders the complaint is known as the reconsidering authority. There may be occasions when the Commissioner decides that in light of the circumstances of the complaint that it is more appropriate that a police force or another relevant authority considers how that complaint was handled, as opposed to directing the force or other appropriate authority who initially received the complaint to reconsider this matter.

51. Subsection (6) provides that a reconsideration process can include those parts of a complaint subject to proceedings under the police misconduct regulations (section 26(2A)(a) of the Police (Scotland Act 1967), but only through an assessment on whether or not those regulations were properly adhered to.

52. Subsection (7)(b) allows the Commissioner to directly supervise any reconsideration process should he or she choose to do so.

Section 33 – Duty of Commissioner not to proceed with certain complaint handling reviews

53. This section places a duty on the Commissioner to discontinue, or not proceed with, a complaint handling review under certain circumstances. There will be circumstances where it
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will not be appropriate for a review of a complaint to be pursued by the Commissioner, for example if a complainer had made complaints of a vexatious nature or if allegations of a criminal nature came to light. Subsection (3) provides that these circumstances will be specified in regulations made by the Scottish Ministers. Subsection (4) outlines the process that must be followed by the Commissioner should a complaint handling review be discontinued or not proceeded with.

Section 34 – Meaning of relevant complaint

54. This section provides a definition of the kind of complaints that the Commissioner will be able to consider for review. A person can make a general complaint about complaint one of the bodies listed in subsection (1A) or about an act of omission taken by a person who is serving with the police. Subsection (3) sets out what is meant by serving with the police.

55. Subsection (2) sets out who can make a complaint. The section further provides that a complainer does not have to be aware of the identity of a particular constable or person serving with the police in order for their complaint against a police force or other relevant organisation to be eligible for review by the Commissioner. Subsection 1B specifically provides that the Commissioner will not have jurisdiction to deal complaints made against the police which contain allegations of criminal behaviour. Overseeing the investigation of criminal complaints will continue to be the responsibility of area procurators fiscal. The Commissioner will also not review complaints about any matter which is related to a person’s employment or service with the police force, even if that person is no longer serving with the police. Subsection (1C) provides that the Commissioner will be able to review complaints made about off-duty behaviour of any person serving with the police.

Section 35 – Appointment of a person to reconsider complaint

56. This section explains how someone is appointed to carry out the reconsideration of a complaint against the police. This person will be appointed by the reconsidering authority which is charged with reconsidering the complaint, but if the Commissioner is directly supervising the reconsideration process, the appointment would be subject to approval by the Commissioner.

Section 36 – Duty to keep complainer and Commissioner informed

57. This section places a duty on the reconsidering authority or the Commissioner (if he or she decides to supervise the reconsideration of a complaint), to keep the complainer, the appropriate authority in relation to the complaint and any person who may be the subject of a complaint informed of the progress of any reconsideration. This section also sets out that the Commissioner, reconsidering authority must inform these persons of what action may be taken following the reconsideration of the complaint and the outcome of the process. Subsection (4) places a duty on any person charged with carrying out a reconsideration to provide the Commissioner with any information that he or she requires to carry out his or her functions.

Section 37 – Power of Commissioner to discontinue reconsideration

58. This section gives the Commissioner the power to discontinue the reconsideration of any complaint which is described in regulations to be made by the Scottish Ministers. These
regulations will be subject to negative procedure and will set out the procedures that should be followed if a reconsideration is to be discontinued. The section also sets out that the Commissioner must inform the complainer, any person who may be the subject of a complaint and the appropriate authority in relation to the complaint, if a reconsideration is discontinued.

Section 38 – Final reports on reconsideration

59. This section places a duty on anyone appointed to carry out a reconsideration, upon its completion, to submit a report to the Commissioner. A copy of that report must also be passed to the police force or organisation which handled the original complaint and, where different, the reconsidering authority.

Section 38A – Appropriate authority in relation to a complaint

60. This section describes which police organisation is the appropriate authority for a complaint, depending on the person or the organisation in respect of whom the complaint is made. The appropriate authority is generally the authority which receives the complaint in the first instance. So if a complaint is made against a constable of Lothian and Borders police force, this force will be the appropriate authority in relation to the complaint.

Section 39 – General functions of the Commissioner

61. This section requires the Commissioner to ensure that organisations within his or her remit have in place effective and efficient complaints handling systems. The Commissioner can also provide advice and make recommendations on how those systems and procedures can be improved or modified.

Section 40 – Reports to the Scottish Ministers

62. This section places a duty on the Commissioner to provide an annual report to the Scottish Ministers, police forces, other organisations within his or her remit and the inspectors of the constabulary on the carrying out of his functions. The Commissioner must also provide reports on anything within his remit that the Scottish Ministers might require, and can provide reports under his or her own initiative on anything the Commissioner considers appropriate.

63. Subsection (5) places a duty on the Scottish Ministers to lay before Parliament and publish all annual and other reports produced by the Commissioner.

Section 41 – Provision of information to the Commissioner

64. This section places a duty on appropriate authorities (i.e. chief constables, police authorities or joint police boards, the Authority and the Agency) to provide, at the request of the Commissioner, information and documents required in order to carry out the Commissioner’s functions.
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Section 42 – Power of Commissioner to issue guidance

65. This section allows the Commissioner to issue guidance regarding the handling of complaints or any other matter specified within this chapter of the Bill. Subsection (2) requires the Commissioner to consult relevant persons and organisations before issuing guidance. Subsection (3) places a duty on those issued with guidance by the Commissioner to comply with the terms of that guidance.

Section 43 – Interpretation of Chapter 2

66. This section provides definitions for various key terms used in this Chapter of the Bill.

CHAPTER 3: OTHER PROVISIONS

Section 44 – Allowances payable to special constables

67. This section amends section 3 of the Police (Scotland) Act 1967 to clarify the basis upon which certain allowances to be known as periodic payments can be paid to Special Constables. Special constables are volunteer police officers who do not receive a salary but may receive various allowances. This section will allow special constables to receive periodic payments in recognition of their commitment to serve for a set number of hours, as set out in regulations issued by the Scottish Ministers.

Section 45 – Appointments of assistant inspectors of constabulary and staff officers

68. This section amends section 34 of the Police (Scotland) Act 1967 so as to remove the current restrictions on the appointment of staff officers to the inspectors of constabulary. At present, only constables from Scottish forces can be appointed as staff officers. The amendment makes clear that any person is eligible to be appointed and that these appointments will be made by the chief inspector of constabulary.

Section 46 – Constables engaged on service outside their force

69. This section amends section 38A of the Police (Scotland) Act 1967 to allow the Scottish Ministers, by order made by statutory instrument subject to negative procedure, to add to the types of service undertaken by constables which can be regarded as relevant service for the purposes of the 1967 Act. This is to allow flexibility for the future as new bodies are created in which Scottish constables may be engaged on periods of temporary service. Some examples of the types of service currently listed as being relevant service are, for example, service with the Independent Police Complaints Commission for England and Wales, service under the International Development Act 2002 and service with the Scottish Ministers in connection with their functions under the Proceeds of Crime (Scotland) Act 2002. The significance of making it clear that an officer on this sort of temporary service is on relevant service within the meaning of section 38A is that it ensures that they retain relevant rights in respect of pay and pension and can continue to be promoted in their police force as if they were still serving.
PART 2: PUBLIC ORDER ETC.

CHAPTER 1: FOOTBALL BANNING ORDERS

Section 47 – Making of order on conviction of a football-related offence

70. This section sets out the arrangements under which a court may impose a football banning order on an individual convicted of an offence instead of or in addition to any sentence the court could impose for the offence. The court must be satisfied that the offence involved the person who committed it engaging in violence or disorder as defined in section 52 and that it related to a football match. The court must also be satisfied that there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with any football matches.

71. Under subsection (6) an offence will automatically be regarded as related to a football match if it is committed at the match or on the way to or from a football match. As an example, where football fans who are attending different matches engage in violence or disorder with each other on the way to their respective matches the offences would be regarded as being related to a football match. The definition of a football match includes matches on television. For example a person may be watching the match in a pub, wearing football colours, where a fight breaks out in the pub during or after the match.

72. In addition an offence will be regarded as relating to a match if it appears from all the circumstances that the offence was motivated wholly or partly by a football match. In other words, the court will need to find some link between the behaviour and a football match. This could include, for example, where groups of rival supporters do not go to a football match but instead meet at a different place for a pre-arranged fight. In some cases, it may be difficult to say that the offence relates to a particular match. An example would be where there are two football matches in the same city. The supporters from the different matches meet later on and offences involving violence or disorder are committed.

Section 48 – Making of order on application to the Sheriff

73. This section empowers the police to make a summary application to a Sheriff court for a football banning order to be imposed against an individual and sets out the arrangements under which a court may impose a football banning order following such an application. Firstly, the court must be satisfied that the person against whom the order is sought has contributed to violence or disorder in the United Kingdom or elsewhere. As with section 47, violence or disorder is defined in section 52. The second test that the court will apply is in line with the test for a banning order on conviction, namely whether there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with any football matches. This section also sets out matters which the sheriff may take into account in deciding whether or not to impose a banning order.

Section 49 – Content of order

74. This section sets out the effect of a banning order. Certain requirements of the order are mandatory and other requirements are at the discretion of the court. The order prohibits the
person from attending any regulated football match (defined in section 51) and requires the person to report at a police station in accordance with the reporting requirements in this Chapter of the Bill (see, for example, section 57) in connection with certain regulated football matches. The order must also require the person subject to the order to report initially to a police station within 5 days of the order being made and to notify certain prescribed information to the football banning orders authority within 7 days of the occurrence of any events that are relevant to the order (schedule 4A sets out the list of events that require such notice and the information that must be provided, for example within 7 days of a change of name and address the person would be required to notify their new name and address to the football banning orders authority).

75. Unless there are exceptional circumstances the order must also require the surrender of the person’s passport when relevant overseas matches are to be played. These exceptional circumstances might be that the person’s employment means he/she needs to travel frequently (for example, an airline pilot). The banning order may, in addition to these mandatory conditions, require the individual to comply with any additional requirements which the court considers would help prevent violence or disorder at or in connection with football matches. This could include prohibiting the person from football matches that are not regulated matches, such as junior league matches if this was thought to be necessary.

76. Subsection (7) sets out the maximum lengths of time a banning order may last, depending on the circumstances in which the order was imposed.

Section 50 – Section 49: supplementary

77. This section gives effect to schedule 4A (relevant events and prescribed information), defines the meaning of the term imprisonment for the purpose of section 49(7)(a) and makes clear that banning orders start on the day which the order is imposed by a court.

Section 51 – “Football matches” and “regulated football matches”

78. This section defines football matches and regulated football matches for the purposes of this Chapter and empowers Scottish Ministers to add matches to or remove matches from the list of regulated football matches by order made by statutory instrument subject to negative resolution. It also makes clear that this Chapter applies both to football matches that are played or that are intended to be played.

Section 52 – “Violence” and “disorder”

79. This section defines “violence” and defines the actions that constitute “disorder” for the purposes of this Chapter.

Section 53 – Variation of certain requirements of order

80. This section empowers courts, to impose or omit the requirement of an order imposed by a court to surrender a passport if there are exceptional circumstances. It also empowers the courts to impose, replace or omit any additional requirements imposed by the court under section 49(4). The criminal and civil courts can both do this on the application of the chief constable of the
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police force in the area of which the person subject to the order resides, a chief constable who believes that that person is in or is intending to come to the area of the chief constable’s police force, or the person subject to the order who would need to show that there had been a relevant change in circumstances which meant that the requirements were no longer necessary. It also empowers civil courts to omit the requirement to surrender a passport imposed by the civil court or to impose this requirement if it was not imposed when the order was first made. The civil court can also do this on the application of the Chief Constable who applied for the order. For orders imposed on conviction it will be the court that made the order which has power to change the requirements. For orders imposed on application to a Sheriff it will be a sheriff sitting in the original sheriff court district who can vary the order, although a sheriff court will also have power to transfer proceedings to another sheriff court district if appropriate.

Section 54 – Termination of order

81. This section empowers the courts to terminate a banning order which has had effect for at least two thirds of its length, under certain circumstances, on the application of the person subject to the order; and sets out the arrangements for this.

Section 55 – Information about making, varying or terminating order etc.

82. This section specifies who the court must provide with copies of banning orders imposed by the court or orders that vary or terminate an order. It sets out the arrangements for providing copies of banning orders where the individual subject to a banning order is in legal custody. It also provides for the Scottish Ministers to prescribe, by order made by statutory instrument subject to negative resolution, additional persons who must be provided with a copy of the orders.

Section 56 – Appeals

83. Subsection (1) provides that a football banning order and any variation or termination of such an order is to be treated as a sentence for the purposes of any appeal thereby attracting the appeals procedure in the Criminal Procedure (Scotland) Act 1995.

84. Subsections (1A) and (1B) provide that where a football banning order made by a criminal court is quashed on appeal and it was not specified by the court that the order was quashed on the grounds that the court erred in holding that the offence was one to which section 47(4) applied, the High Court of Justiciary may declare that the offence involved violence or disorder and was related to a football match.

85. Subsections (2)-(6) set out the appeals procedure in respect of football banning orders imposed by the civil courts and the time limits that apply. An appeal can be made on a point of fact or law.

Section 57 – Foreign matches: reporting and other requirements

86. This section sets out the role and functions of the football banning orders authority and, in following the football banning orders authority’s direction, certain constables, in relation to
matches played outwith the United Kingdom. Specifically, it requires the football banning orders authority to issue notices to those persons subject to banning orders. These notices require the persons to report to a police station and surrender their passport if they have one, or declare that they do not, if they do not. The football banning orders authority must issue these notices when it is of the opinion that requiring the person to report is likely to reduce the risk of violence or disorder at or in connection with the overseas match.

87. **Subsection (6)** enables the football banning orders authority to establish criteria for determining whether to impose a notice requiring a person to report and surrender their passport. The criteria may be used for determining whether notices should be imposed in individual cases or on particular groups of people. For example, it might be reasonable to establish criteria that all supporters of a particular team subject to banning orders should be required to report and surrender their passport when that team is playing abroad, if there has been recent trouble aboard involving supporters of that team.

**Section 58 – Notices under section 57(4): further provision**

88. This section provides that individuals subject to banning orders may not be required to surrender their passport under section 57(4) except in the control period in relation to a match or tournament played outwith the United Kingdom. It also defines what the control period is. For a regulated football match outside the United Kingdom it is the period beginning 5 days before the day of the match and ending when the match is finished or cancelled. For certain external tournaments it may also be appropriate for a block control period to apply so that the person is required to report and surrender their passport for the whole of the external tournament. The block period will apply 5 days before the day of the first match in the tournament (excluding qualifying games) and finish on the day on which the last football match is played. The Scottish Ministers will require to prescribe by order made by statutory instrument subject to negative resolution the external tournaments that should be subject to a block control period. These could be tournaments such as the European Championships and the World Cup.

89. **Subsection (2)** requires the police to return the passport to the individual as soon as is reasonably practicable after the control period ends.

**Section 59 – Sections 57 and 58: guidance**

90. This section requires the football banning orders authority to have regard to any guidance issued by the Scottish Ministers that relates to their functions under sections 57 and 58 when carrying out those functions.

**Section 60 – Exemption from notice served under section 57(4)**

91. This section provides that persons who are subject to a football banning order may apply for an order disapplying any notice issued to them under section 57(4) that requires them to report to a police station and surrender their passport, or declare that they do not have a passport, in connection with a particular regulated football matches outside the United Kingdom. Where the application is made during a control period the constable responsible for a police station may make the order but must refer the issue to the football banning orders authority unless this is not reasonably practicable. Otherwise, the application will be made to the football banning orders
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authority. Where a constable makes an order disapplying any notice issued under section 57(4), the constable must give written notice of this fact to the authority as soon as is reasonably practicable. The applicant will require to show to the football banning orders authority’s or, as the case may be, constable’s satisfaction that there are circumstances which justify them being so exempted and that because of those circumstances the applicant would not attend the match or matches if so exempted; for example, if they need to attend a family funeral abroad during the control period.

92. The ability for a person to apply for an order disapplying the reporting and passport surrender provisions is included to take account of articles 1 and 2 of Council Directive 73/148/EEC of 21 May 1973 in relation to freedom of movement, and also the comments of the court in the case of *Gough & Anor v Chief Constable of Derbyshire* [2002] WWCA CIV 351 – 20th March 2002 in the context of the equivalent legislation for England and Wales in the Football Spectators Act 1989. The court was satisfied that whilst restraints could be imposed on persons leaving the country on the grounds of public policy, in order to ensure that the scheme was proportionate under the European Convention on Human Rights, exemptions should be permitted where the reason for going abroad was other than attendance at the regulated match.

Section 61 – Section 60: supplementary

93. This section requires the football banning orders authority and the constable to have regard to any guidance issued by the Scottish Ministers, which they shall publish from time to time, when taking decisions under section 60. It also provides for the appeals process against the decision of the football banning orders authority or the constable on their decisions to refuse to grant an exemption under section 60.

Section 62 – Suspension of reporting requirements

94. This section suspends the requirements for a person subject to a banning order to report to a police station and surrender their passport during any period where the person is not resident in Scotland. It also suspends certain requirements of banning orders from taking effect where the person subject to a banning order is in custody. It provides that, if the person was prevented from reporting initially to a police station because he or she was in custody, they must report to a police station within 5 days beginning with the date of their release if, when they are released, their banning order has more than 5 days to run.

Section 63 – Service of documents

95. This section sets out the methods by which a document to be served under this Chapter can be served on a person who is subject to a banning order.

Section 64 – Offences under this Chapter

96. Subsection (1) makes it an offence (a) fail to comply with any requirements of a banning order; (b) fail to comply with a requirement imposed by a constable under section 57(1) for giving effect to an order in relation to regulated football matches outside the United Kingdom and (c) fail to comply with a requirement imposed by the football banning orders authority under
section 57(4) requiring them to report to a police station at particular times and attend a police station to surrender their passport or make a declaration that they do not have a passport.

97. **Subsection (1A)** provides that a person charged with an offence under subsection (1) will have a defence if they can prove that they had a reasonable excuse for breaching the requirements imposed by a banning order or a notice issued under a banning order.

98. **Subsection (2)** provides that the punishment on summary conviction for breaching any requirements of a banning order or failing to comply with a requirement imposed by a constable under section 57(4) is imprisonment for up to 6 months, a fine of up to level 5 (£5,000) or both.

99. **Subsection (4)** provides that the punishment on summary conviction for failing to comply with a requirement imposed by the football banning orders authority under section 57(1) is a fine not exceeding level 2 on the standard scale (£500).

100. **Subsection (7)** makes it an offence to provide false or misleading information in support of an application for exemption from the reporting and passport surrender requirements. That offence is punishable by summary conviction with a fine of up to level 3 on the standard scale (£1,000).

**Section 65 – Interpretation of Chapter 1**

101. This section sets out who is the football banning orders authority and defines passport for the purposes of this Chapter. The first football banning orders authority will be the chief constable of Strathclyde Police who will establish a team to administer the orders on behalf of all Scottish forces. This section also provides that Ministers may by order made by statutory instrument subject to negative resolution procedure appoint a different authority to take on the role and functions of the football banning orders authority.

**CHAPTER TWO: PUBLIC PROCESSIONS**

**Section 66 – Notification of public processions**

102. This section makes certain amendments to section 62 of the Civic Government (Scotland) Act 1982 to provide local authorities with more powers to apply conditions to a procession. The section extends the notice period before which the procession organiser must notify the local authority of their intention to process from 7 days to 28 days, to give local authorities and the police more time to consider applications, removes the ability of local authorities to grant exemptions from the requirement to notify them of a procession and provides that section 62 does not apply to funeral processions organised by funeral directors. It also provides for the Scottish Ministers to prescribe, by order made by statutory instrument subject to negative resolution, other processions to be exempt from the notification requirements. This section also allows local authorities to waive the 28-day notification requirement in exceptional circumstances.
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Section 67 – Powers and duties of local authorities

103. This section makes certain amendments to section 63 of the Civic Government (Scotland) Act 1982. It enables local authorities to consider a wider range of issues when deciding whether a procession should take place, such as the risk of damage to property, disruption to the life of the community and whether the procession would place an excessive burden on the police or other public services. This section also requires local authorities to maintain lists of processions held and prohibited in their areas and make them available to the public and empowers local authorities to impose conditions on or prohibit the holding of processions that are specified by the Scottish Ministers under section 62(11B) of the Civic Government (Scotland) Act 1982.

Section 68 – Minor amendments of 1982 Act

104. This section makes some minor amendments to the Civic Government (Scotland) Act 1982 including the addition of a new section 65A to require local authorities to have regard to guidance issued by the Scottish Ministers when carrying out their functions under Part V of the Civic Government (Scotland) Act 1982, which contains the law on public processions in Scotland. The guidance will set out the steps that local authorities and others should take when an application to hold a procession is being considered.

CHAPTER THREE: OTHER PROVISIONS

Offensive Weapons

Section 69 – Increase in maximum term of imprisonment for certain offences

105. This section amends sections 49(1)(a) (penalty on summary conviction for offence of possessing an article with a blade or point in a public place) and 49A(5)(a)(i) (penalty on summary conviction for offence of possessing an article with a blade or point in a school) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) by increasing the maximum term of imprisonment on summary conviction from 6 to 12 months. It also amends sections 49(1)(b) (penalty on indictment for offence of possessing an article with a blade or point in a public place) and section 49A(5)(a)(ii) (penalty on indictment for offence of possessing an article with a blade or point on school premises) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) by increasing the maximum term of imprisonment for these offences from 2 to 4 years.

Section 70 – Amendment of requirements for exercise of certain powers of arrest

106. This section amends:

- sections 47(3) (power of constable to arrest without warrant person suspected of possessing an offensive weapon in a public place),
- 48(3) (power of constable to arrest without warrant person suspected of obstructing search for offensive weapon) and
- 50(3) (power of constable to arrest without warrant person suspected of contravening section 49(1) or 49A(1) or (2)) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39).
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These amendments widen constables’ powers of arrest in relation to offences under:

- sections 47(1) (offence of carrying offensive weapon in a public place),
- 48(2) (offences of obstructing a constable or concealing an offensive weapon from a constable),
- 49(1) (offence of having in public place article with blade or point), and
- 49A(1) and (2) (offence of having article with blade or point (or offensive weapon) on school premises).

**Section 71 – Sale of knives and articles with blade or point to young persons**

107. This section amends section 141A(1) of the Criminal Justice Act 1988 (c.33) (offence of sale of knives and certain articles with blade or point to persons under sixteen) by increasing the minimum age of persons to whom such items (other than knives designed for domestic use) may be sold from 16 to 18 years of age. The amendment also makes clear that swords are included in the list of items to which this provision applies.

**Fireworks**

**Section 72 – Possession of prohibited fireworks: powers of search and arrest**

108. This section amends the Fireworks Act 2003 to give police powers of search, seizure and arrest without warrant in relation to possession offences created by regulations under that Act. Sections 3 and 5 of the 2003 Act enable regulations to make provision prohibiting the possession of fireworks by persons of a specified age and provision prohibiting the possession of fireworks of a specified description including by persons of a specified description. At present, the Fireworks Regulations 2004 (2004/1836) provide that subject to regulation 6 of those regulations no person under the age of 18 years shall possess an adult firework in a public place and no person shall possess a firework classified as category 4 under Part 1 of BS 7114, which are generally the largest and most powerful fireworks.

109. The new provision sets out the powers of a constable in relation to searching, detaining or arresting a person when the constable has reasonable grounds to believe that the person is committing an offence in relation to the possession of fireworks as well as powers of seizure.

**Control of Sex Offenders**

**Section 72A – Police to take data and samples from persons subject to notification requirements**

110. Section 72A amends the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) by inserting a new section 19AA to allow the police to take relevant physical data (primarily fingerprints and palm prints), or any DNA samples from persons subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (“the 2003 Act”) (“relevant sex offender”), if the police have not previously taken a sample or data from these individuals, or if
such material has been lost or destroyed. This section also amends section 87 of the 2003 Act so that the police can also take a DNA sample as well as any relevant physical data from the person.

111. **Subsection (1)** provides that these arrangements only apply to persons subject to the notification requirements of Part 2 of the 2003 Act.

112. **Subsection (2)** provides that the police will be able to take samples or data from any person who was subject to the notification requirements of the 2003 Act at the time the provisions commence, as well as any individual who becomes subject to notification requirements after commencement. The police will not be able to take samples and prints from any person who may have been subject to the notification requirements before the date of commencement, if that person was no longer subject to the requirements at that date.

113. **Subsection (3)** provides that a constable, or police custody and security officer (at a constable’s direction) can take and retain any data or DNA samples by certain means specified in section 18(6) and (6A) of the 1995 Act.

114. **Subsection (4)** provides that the police will not exercise their powers under this section, if they have already taken data or DNA samples from a relevant sex offender who is subject to the notification requirements after their conviction under sections 19(2) or 19A(2) of the 1995 Act. If any data or samples which previously taken under these sections has been lost or destroyed, the police will be able to use their powers under this section to take further data or samples.

115. **Subsection (5)** provides that the police can taken further DNA samples and data under this section, if the data and samples that were initially taken have been lost or destroyed, or were not suitable or sufficient for analysis.

116. **Subsections (6)** provides that the police may take data or DNA samples from a relevant sex offender at a police station, prison, hospital or any other place where that person is held in legal custody.

117. **Subsection (7)** provides that such data or DNA samples can also be taken from a relevant sex offender in a police station to comply with the other notification requirements of the 2003 Act, or if they have been arrested or detained under suspicion of breaching the notification requirements.

118. The police may not have been able to exercise their powers under this section if a relevant sex offender has not notified their details to the police. As the police will not know their whereabouts, they will be unable to issue a notice requiring the relevant offender to attend a police station. Although data and samples can be taken from a relevant sex offender who would be arrested or detained under section 18 of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act), section 18(3) of that Act provides that this material has to be destroyed if the offender is not subsequently convicted of that offence. Therefore if a relevant sex offender is arrested under suspicion of committing an offence under section 91 of 2003 Act, and the police do not already have their data or DNA samples, the police will be able to take and retain their data and
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DNA samples under these powers. These powers do not affect the any powers which the police may exercise to take data and DNA samples under section 18 of the 1995 Act.

119. **Subsection (8)** provides that the police must give a relevant offender at least seven days notice that they are required to attend a police station to provide data or a sample. This notice can specify the time of day or the periods of time in that day in which the offender should attend.

120. **Subsection (9)** provides that if a relevant offender is required to attend a police station to give data or a sample under subsection (7) because a previous sample has either (a) been lost or destroyed, or (b) is deemed unsuitable for the purposes of analysis, then these circumstances shall be explained to the offender.

121. **Subsection (10)** provides that if a relevant sex offender is in a police station due to having been arrested or detained for an offence relating to the notification requirements, and a sample is to be taken the offender under this section, that this shall be explained to the offender.

122. **Subsection (11)** confers a power of arrest on the police if a relevant offender fails to comply with the obligations to attend a police station within the requested timeframe.

123. **Subsection (12)** ensures that any of the powers which are exercised in this section are without prejudice to the exercise of any powers in section 18 of the 1995 Act. If the police have taken any data or samples from an individual under section 19AA of the 1995 Act, they will be able to take data and samples under section 18 of the 1995 Act, if an individual is arrested or detained under suspicion of having committed an imprisonable offence.

124. **Subsections (3) and (4)** make consequential amendments to sections 19, and 19A of the 1995 Act. These changes mean that the police will not be able to exercise their powers to take data and samples from a relevant sex offender under those sections, if the police have already taken this material under section 19AA of the 1995 Act. The police will be able to exercise their powers under sections 19 or 19A of the 1995 Act, if any DNA samples or data which has been taken under this section has been have been lost or destroyed.

125. **Subsection (5)** amends section 19B to enable the police to use reasonable force in exercising the powers in section 19AA.

126. **Subsection (7)** amends section 87 of the 2003 Act by replacing subsections (4) and (5) with a new subsection (5A) which permits the new section to operate alongside the notification arrangements provided for by virtue of section 83(1), 84(1) or 85(1) of the 2003 Act. The police will be able to take DNA samples and any data from a relevant offender when he or she attends a police station to notify their details to the police. This will enable the police to obtain DNA samples and data from these offenders without having to give them notice to return to a police station so this information can be obtained.

127. **Subsection (8)** amends section 88 of the 2003 Act by inserting a new subsection (2A) which makes clear that the police can take and retain any “relevant physical data” from a relevant sex offender which is section 18(7A) of the 1995 Act.
128. **Subsection (9)** amends section 91(1)(a) of the 2003 Act by inserting a reference to subsection (5A). If a relevant offender fails to provide or allow any DNA sample or DNA sample to be taken from him, that he will commit an offence under section 91 of the 2003 Act.

**Section 72B – Sex offender notification requirements**

129. Section 72B amends the Sexual Offences Act 2003 to require relevant sex offenders in Scotland to provide the police with details of their passports in order to comply with the notification requirements of Part 2 of the 2003 Act. This is achieved by amending sections 83, 84, 87, 91, and 138 of the 2003 Act, which contain the statutory powers governing the notification requirements. The amendment to section 83 also confers power on the Scottish Ministers to make regulations subject to affirmative resolution which prescribe further information that sex offenders are required to provide to the police.

130. **Subsection (2)** amends section 83 to:

- insert subsection (5)(h) which provides that relevant sex offenders are required to provide details of their passports to the police in order to comply with the notification requirements of Part 2 of the Sexual Offences Act 2003;
- insert subsection (5)(i) which allows the Scottish Ministers to make regulations requiring those who are subject to the notification requirements to notify other relevant information about him or his personal details as prescribed in the regulation;
- insert subsection (5A) which provides the details of the passport that are required to be provided. This includes the passport number, and dates of issue and expiry.

131. **Subsection (3)** amends section 83 to insert a subsection (8) to define passport for this purpose. The definition includes passports issued by countries and authorities outside the UK.

132. **Subsection (5)** amends section 84 to insert subsections (e), (f), which provide that a relevant sex offender has 3 days to notify the police if he has lost or ceases to have a passport, if he obtains a new passport. A new subsection (g) is also inserted in consequence of the new power in section 83(5)(i) to prescribe further notification requirements. The power allows Ministers to prescribe by regulations subject to affirmative procedure the events in relation to any information prescribed under section 83(5)(i) that will require to be notified under this section.

133. **Subsection (7)** amends section 87 to insert subsection (5B) which states that when notifying details under the Act, if requested to do so, a relevant sex offender must produce his passport to the police so that it may be examined.

134. **Subsection (8)** amends section 91 to provide that a person commits an offence if he fails to comply with section 87(5B).
135. **Subsection (9)** amends section 138 to provide that regulations made under sections 83(5)(i) and 84(1)(g) will be subject to the Scottish Parliament’s affirmative resolution procedure.

**Section 72C – Information about release: power to require giving of specified information**

136. Section 72C amends section 96 of the Sexual Offences Act 2003 by inserting two new subsections. The Scottish Ministers may make regulations under section 96 which require any person who is responsible for a relevant sex offender to notify any person who is specified in the regulations of any occasion when that offender is transferred or released from an institution. Subsection (2A) provides that any regulations made by Scottish Ministers under section 96 may, also set out what information about that offender, a responsible person may provide to any specified person. The regulations may also set out when a responsible person may give a specified person a photograph of any part of him (i.e. photographs may be taken of an offender’s face as well as distinguishing features, such as a tattoo).

137. New subsection (2B) makes clear that the meaning of “photograph” in the section is the same as the meaning in section 88(2) of the 2003 Act.

**Section 72D – Police powers of entry and examination of relevant offender’s home address**

138. Section 72D amends the Sexual Offences Act 2003 (“the 2003 Act”) by providing a new section 96A that sets out the procedure for the application for and issue of a warrant to enter, examine and search the premises of registered sex offenders.

139. **Subsection (1)** of section 96A gives a sheriff power to issue such a warrant, on application of a senior police officer, to enter and search the premises of a registered sex offender and if necessary to use reasonable force, if he is satisfied that the necessary conditions are met.

140. **Under Subsection (2)** the application for a warrant to enter, examine, and search will only be granted if the sheriff is satisfied that;

- the address has been notified as the relevant offenders home address or an address at which the relevant sex offender resides or is regularly found;
- that the relevant sex offender is living in the community and is not in legal custody, prison, detained in hospital or outside the UK (**subsection (4)**);
- that a warrant would assist the police in carrying out a risk assessment as to likelihood of an offender committing a sexual offence (**subsection 3**); and
- the police have previously tried to gain access to the said premises on more than one occasion but have failed to do so.

141. **Subsection (5)** provides that the sheriff will not need to determine the application for a warrant, without the need to hear from the relevant offender or anyone with an interest in the premises.
142. **Subsection (6)** provides that the warrant to enter, examine, and search premises does not allow the police to seize and retain anything found there.

143. **Subsection (7)** states that a warrant will only be executed at a reasonable hour.

144. **Subsection (8)** provides that the warrant will expire after one month from the date when the warrant is granted. The police will not be able to execute the warrant after this date.

145. **Subsection (9)** provides that the warrant can only be executed on one occasion.

146. **Subsection (10)** provides that the powers described above will not prejudice any other police powers to enter, examine, search, and seize (under warrant or otherwise) in the normal way if they believe there is evidence to support the fact that an offence has been committed.

147. **Subsection (11)** provides definitions for the terms “the relevant force”, “senior police officer”, and “sexual offence”.

**PART THREE: CRIMINAL JUSTICE**

**Powers in relation to suspects**

**Section 73 – Power to require giving of certain information in addition to name and address**

148. This section amends Section 13 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (“the 1995 Act”) (which gives police constables certain powers in relation to suspects and witnesses). Section 13(1)(a) of the 1995 Act empowers a constable to require persons whom they suspect of committing an offence to tell them their name and address. Subsection (3) enables a constable also to require a suspect or a potential witness to an offence to provide details of their date and place of birth and details of their nationality as the constable considers necessary or expedient for establishing the person’s identity. A failure to provide this information without reasonable excuse is an offence.

149. **Subsection (6)** amends section 14 of the 1995 Act. Section 14(9) provides that a person who has been detained is under no obligation to provide any information to the police, other than their name and address. The amendments made by subsection (6) will put a person under an obligation also to inform the police of their date and place of birth and details of their nationality as the constable considers necessary or expedient for establishing that person’s identity. It will not be an offence if a person does not provide this information to the police.

**Section 74 – Power to take fingerprints to establish identity**

150. This section also amends section 13 of the 1995 Act to give police officers the power to take fingerprints to verify the identity of someone suspected of having committed an offence and to establish if that person has committed any other offences. Constables will be able to use this power in any place and will be able to take fingerprints outside a police station. The power will be used by officers to confirm the identity of a suspect by checking these fingerprints against
records in existing databases. Subsection (2) requires that fingerprints taken for these purposes must be destroyed as soon as they have been used. They cannot be retained by the police.

151. Subsection (6) provides that it will be an offence for a person to refuse to allow a constable to take fingerprints. Subsection (8) states that a device which is used for taking fingerprints must be approved by an order made by the Scottish Ministers. Such an order will not be subject to any parliamentary procedures.

**Arrested persons: drug testing and reference for assessment**

**Section 75 – Testing of arrested persons for Class A drugs**

152. Section 75 inserts two new sections 20A and 20B into the Criminal Procedure (Scotland) Act 1995.

153. Section 20A provides that the police may test a person for a relevant Class A drug if he or she has been arrested under suspicion of committing a relevant offence. The relevant offences are listed in section 20A(8). A person who has been arrested under suspicion of committing any other offence which is not a relevant offence can also be tested at the discretion of a senior police officer if he or she believes that misuse of a Class A drug caused or contributed to the offence. Section 20A(8) provides that the Class A drugs that will be tested for are cocaine and diamorphine (heroin). Section 20A(2) provides that the police cannot test a person for a relevant Class A drug if that person has already given a sample for testing after they have been brought to a police station. Section 20A(5) sets out that a further sample can be taken if the original is not suitable for analysis, was insufficient or was destroyed during the testing process.

154. Section 20A(3) sets out the conditions which must be met before a person is tested for a relevant Class A drug. A sample must also be taken or provided within 6 hours of that person being brought to a police station. To allow for the policy to be rolled out to particular parts of Scotland and in stages, a sample can only be taken if the Scottish Ministers have made an order by statutory instrument which states that mandatory drugs tests can be carried out in the area in which the police station is located. Such an order will be subject to negative procedure of the Parliament.

155. Section 20A(7) makes it an offence for an arrestee to refuse to comply with a drug test under these powers if required to do so. The maximum penalties for committing this offence are set out in section 20B(6). A constable is required to warn a person of this fact under section 20(4). When a person has been arrested for an offence (other than a relevant offence), a constable must also inform that person that a senior police officer has authorised him or her to take a sample, or require that person to provide a sample. A person must also be told of the reasons why a senior police officer suspects that a Class A drug has been taken.

156. Section 20B supplements section 20A of the 1995 Act. Subsections (4) and (5) set out procedures which must be followed if a senior police officer decides that a person should be tested for a class A drug. Subsection (7) imposes a requirement to destroy a sample which has been taken under section 20A. Subsection (7A) provides an exception to this, allowing retention of a sample for the purposes of prosecution under section 79 (for failing to attend and stay for the
duration of assessments) – in this case the sample needs to be retained to be produced in court, but this must be destroyed as soon as possible once it is not longer needed for any proceedings. Subsection (8) also sets down what the information gathered through a mandatory drugs test can be used for. Section 20B(9) provides that the Scottish Ministers can add to or vary the list of trigger offences and or relevant Class A drugs. Such an order will be made by statutory instrument and will be subject to affirmative procedure.

Section 76 – Assessment following positive test under section 20A of 1995 Act

157. This section provides that an individual who has tested positive for a relevant Class A drug will be required to attend a drugs assessment with a suitably qualified drugs assessor. A person will be required to remain at that assessment for its duration. Section 76 also sets down that the purpose of the drugs assessment is to establish whether or not the person is dependent on or has a propensity to misuse Class A drugs and whether or not they may benefit from assistance or treatment.

Section 77 – Requirements under section 76: supplementary

158. This section sets out the duties which are imposed on the police when a person is required to attend a mandatory assessment into their drug misuse. A constable must inform a person where the assessment will take place and advise them that they are required to attend that place within 7 days and during certain times in order to obtain details of their appointment. A constable is also required to inform a person that a failure to attend the assessment centre to obtain details of their appointment, attend the assessment or remain there for its duration will constitute an offence (subsection (3)). These duties must be carried out before the person who is required to attend the assessment is released from custody.

Section 78 – Date, time and place of assessment

159. This section sets out the requirements on a drugs assessor when a person reports to the assessment location to receive details of their appointment. The drugs assessor is required to notify the person in writing of the date, time and place of the drugs assessment. Subsection (3) provides that a drugs assessor is required to provide the person with notice of any change to the date, time or place of the assessment. The notification must be sent registered or recorded delivery and should also warn the person that they are liable to prosecution if they do not attend and remain for the duration of the assessment.

Section 79 – Failure to comply with requirements under sections 76 and 77

160. Subsection (2) provides that a person will have committed an offence if they fail to attend the assessment location to obtain details of their appointment, or fail to attend or to stay for the duration of a drugs assessment. A drugs assessor must notify the police if an offence has been committed.

Section 81 – Guidance for the purposes of Sections 76 to 79

161. This section sets out that constables or any other suitably qualified person carrying out functions under these powers must have regard to any guidance issued by the Scottish Ministers.
Section 82 – Interpretation of sections 76 to 79

162. This section sets out certain definitions of terms used in sections 76 to 80.

Offenders assisting investigations and prosecutions

163. Sections 83 – 88 create a statutory framework to provide for sentence reductions and immunity from prosecution for accused who co-operate in the investigation and prosecution of their criminal colleague.

Section 83 – Assistance by offender: reduction in sentence

164. This section provides that the court, when sentencing accused persons who plead guilty in proceedings on indictment before that court and who have entered into a written agreement with a prosecutor (an “assistance agreement”) to provide assistance in relation to any investigation or prosecution, must take account of the nature and extent of that assistance.

165. Subsection (3) requires the court, if it passes a lower sentence on account of the assistance, to state that it has done so and what the sentence would otherwise have been. Subsection (4) provides that the court does not have to make such a statement if it would not be in the public interest (in which case the court must provide a written notice to the prosecutor and the accused that it has passed a lower sentence on account of the assistance and stating what the sentence would otherwise have been.)

166. Subsection (3A) provides that if the court, taking into account assistance given or offered under an assistance agreement, does not pass a lower sentence it must state its reasons for doing so. Subsection (4A) makes similar provision to subsection (4): the court does not have to state why it did not reduce the sentence if it would not be in the public interest (in which case the court must provide a written notice to the prosecutor and the accused stating its reasons for not passing a discounted sentence.)

167. Subsection (5) clarifies that this section also applies to offences for which there is a minimum sentence and also to sentences fixed by law in determining the minimum period of imprisonment that a person must serve. Subsection (6) provides that the court's decision to take into account the assistance provided or offered by a person does not affect any other power it may have to take any other matters into account when determining that person's sentence, punishment part or other minimum term of imprisonment. Subsection (7) clarifies the meaning of certain references and includes provision allowing the assistance agreement to be made using electronic communications.

Section 84 – Assistance by offender: review of sentence

168. This section provides that where an offender has been sentenced, following conviction of an offence on indictment, and one of the conditions in subsection (2) applies, a prosecutor may refer the case back to the court for review, if the offender is still serving the sentence and the prosecutor considers it is in the interests of justice to do so. The conditions in subsection (2) are:
That the offender received a discounted sentence on account of having entered into an assistance agreement with the prosecutor but then fails to give assistance in accordance with the agreement;

That the offender received a discounted sentence on account of having entered into an assistance agreement with the prosecutor and then gives or offers to give further assistance in pursuance of another assistance agreement;

That the offender did not receive a discounted sentence but then subsequently enters into an assistance agreement with the prosecutor.

169. **Subsection (3)** ensures that where a person was convicted of an offence for which the sentence was fixed by law, they must have pleaded guilty if their sentence is to be referred back to court for a review under this section. **Subsection (4)** also provides that the case is to be referred back to the court which passed the sentence or, if the sentence was passed on appeal, that it is referred back to the court of first instance. Where possible any case referred is to be considered by the judge or judges who passed the sentence or, if the sentence was passed on appeal, by the judge who heard the case at first instance.

170. Subsection (4A) provides that a person is still serving a sentence for the purposes of section 4(a) if they are been released from prison early (whether on licence or unconditionally) under Part 1 the Prisoners and Criminal Proceedings (Scotland) Act 1993. Accordingly, a person could, for example, be recalled to court to face the consequences of reneging on an assistance agreement in circumstances where they have been released on licence into the community.

171. **Subsection (6)** gives the court a power to substitute a greater sentence where it considers the person has failed to provide the agreed assistance (not exceeding the sentence it could have passed but for the assistance agreement). Where a person has entered into an assistance agreement for the first time or a further assistance agreement, **subsection (8)** gives the court a power to take that into account and to reduce the individual's sentence accordingly. **Subsection (10)** gives a right of appeal with leave of the High Court to the offender and to the prosecutor in respect of any decision of the court in reviewing the sentence.

172. **Subsection (11)** requires the court, in passing a lesser sentence under **subsection (8)** or on appeal under **subsection (10)** to state that it has done so in consequence of further assistance or assistance given or offered for the first time. **Subsection (12)** provides that the court need not make such a statement where it does not consider it to be in the public interest but in those circumstances it must give written notice of the fact that is has passed a lesser sentence on account of the assistance to the offender and the prosecutor.

**Section 85 – Proceedings under section 84: exclusion of public**

173. This section provides that a court in dealing with proceedings in respect of a sentence review under section 84 can make an order to exclude people from the court who, in its opinion, do not have sufficiently direct interest in the proceedings to justify their presence and to prohibit publication of any matter relating to the proceedings. The court may only make such an order if it considers that it is necessary to protect the safety of any person and that it is in the interests of
justice. The court cannot, however, exclude the judge, an officer of the court, the prosecutor and the other party to the proceedings as well as counsel or solicitor for that other party.

Section 86 – Section 84: further provision

174. Subsections (1) and (2) provide an order making power for the Scottish Ministers to make provision in relation to the procedure to be following in proceedings for sentence review under section 84. An order may apply with modifications the provisions governing appeals from solemn proceedings set out in Part VIII of the Criminal Procedure (Scotland) Act 1995 or modify that Part of the Act. The order is to be made by negative resolution procedure in the Scottish Parliament or, if it modifies the 1995 Act, by affirmative resolution procedure.

175. Subsections (3) and (4) provide an order making power for the Scottish Ministers to make provision as to how a period served in custody; a period during which a person is released on license under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9); or a period during which a person is on unconditional release under Part 1 of the 1993 Act, are to affect the calculation of periods of time under the 1993 Act as they apply to a revised sentence imposed under either section 84(6), (8) or (10) of the Bill. In making any such order the Scottish Ministers may modify the 1993 Act.

Section 87 – Sentencing: consideration of undisclosed information

176. This section provides that when a person has been convicted of any offence, the court in sentencing that person can take into account information contained in a report, including a report provided electronically, from a constable or other officer of an organisation which has the function of investigating offences, about assistance given by that person in relation to another criminal investigation or prosecution. This section applies to assistance provided otherwise than under an assistance agreement with the prosecutor.

177. With the agreement of the offender, the information will be made available by the prosecutor to the offender, his or her counsel or solicitor and the court. However, if the offender does not wish to disclose the information to his or her solicitor or counsel then it may be provided by the prosecutor only to the offender and the court. Where the court takes the information about assistance into account, it must not disclose the existence of the report or whether it has passed a lesser sentence on account of the assistance given.

Section 87A – Appeals against sentence: undisclosed information

178. Subsection (1) applies to cases in which information has been presented to the court under section 87 and the person sentenced under that section appeals against the sentence imposed. In those circumstances the High Court must not disclose the information, the existence of the report containing the information, or the fact that the person received a reduced sentence by virtue of such a report, to any person other than the prosecutor, the appellant and, with the appellant’s agreement, the appellant’s counsel or solicitor.

179. Subsection (2) applies other than in circumstances provided for under section 87A(1). It is intended to ensure the anonymity of information provided under section 87 in circumstances
where the court may become aware of it in respect of appeals which are taken by a person other
than the person sentenced under section 87. For instance, it would apply if the High Court
became aware of such a report in an appeal taken by a co-accused. It provides that the High
Court must not disclose, to any person, the existence of a report provided under section 87, or the
fact that a court has taken such a report into account when sentencing.

180. Subsection (3) provides for rules of court to be made which will allow a person sentenced
under section 87 to make representations to the High Court in confidence.

Section 88 – Investigation and prosecution of crime: immunity from prosecution

181. This section allows the prosecutor to grant a person an immunity from prosecution by
giving that person a notice in writing known as a conditional immunity notice. If a conditional
immunity notice is given to a person, that person may not be prosecuted for the offence or any
offence of a description specified in the notice and any proceedings for those offences which
have already commenced when the notice is given must be discontinued.

182. Subsection (3) provides that the notice must specify conditions to which its application is
subject, and it may specify the circumstances in which it does or does not apply. If a conditional
immunity notice ceases to have effect, the prosecutor must give notice to the person by the issue
of a written cessation notice as provided for in subsection (4). The cessation notice must state
when and why immunity ceased.

183. Where a cessation notice is issued and the person is to be subject to criminal proceedings,
subsection (5) provides that, if the person was given the conditional immunity notice after his or
her first appearance on petition in respect of the offence, that person is to be treated as not having
appeared on petition and accordingly, the time limits in section 65(1) of the Criminal Procedure
(Scotland) Act 1995 apply from the first appearance of the person on petition after the giving of
a cessation notice. Subsection (6) provides that other statutory time limits for the bringing of a
prosecution will run from the date the cessation notice is issued if the conditional immunity
notice was issued within the original time limit for bringing the prosecution. Similarly,
subsection (7) provides that where proceedings timeously commenced are discontinued
following the issuing of a conditional immunity notice and a cessation notice is subsequently
issued the statutory time limit for bringing the prosecution is to run again from the date the
cessation notice is issued.

184. Subsection (8) applies in circumstances where a conditional immunity notice has ceased
to have effect and proceedings are taken against the person to whom the conditional immunity
notice was given. In those circumstances this subsection provides that the fact that
communication has taken place between the prosecutor or anyone else and the person to whom
the notice was given does not constitute a ground on which a court can decide that proceedings
should not have been brought or continued.

185. Subsections (9) and (10) make provision in relation to notification by the person given a
conditional immunity notice of any change of address for the purposes of giving a cessation
notice. The procedure for giving a conditional immunity notice and cessation notice is set out in
subsections (11) and (12). Subsection (13) makes provision of the use of electronic communications in the giving of notices under this section.

Section 88A – Enforcement of Sea Fisheries (Shellfish) Act 1967

186. This section makes provision relating to the enforcement of restrictions imposed by, or regulations made by, an order under section 1 of the Sea Fisheries (Shellfish) Act 1967 (a “regulating order”).

187. Subsection (1) amends the Sea Fisheries (Shellfish) Act 1967 to insert new sections 4A to 4D, setting out the powers exercisable by British sea-fishery officers (principally officers of the Scottish Fisheries Protection Agency (SFPA)) for the purpose of enforcing restrictions and regulations made by or under a regulating order, together with supplementary provisions. These powers are similar to those already available to SFPA for the enforcement of other fisheries legislation such as the Inshore Fishing (Scotland) Act 1984 and orders for the enforcement of Community restrictions and obligations made under s.30(2) of the Fisheries Act 1981. Sections 7(2) and (3) of the Sea Fisheries Act 1968 give the Scottish Ministers power to appoint any person as a British sea-fishery officer, and to limit this appointment by reference to particular matters, to a particular area or to a particular order or class of order. In appropriate circumstances, the Scottish Ministers may appoint officers employed by the grantees of regulating orders to be British sea-fishery officers for the purposes of enforcing their respective orders, giving them access to these new enforcement powers.

188. Subsection (3) amends section 15 of the Sea Fisheries Act 1968 to make it clear that the references in sections 3 (effect of grant of right of regulating a fishery), 4A and 4B of the Sea Fisheries (Shellfish) Act 1967 to restrictions imposed by, or regulations made by, an order under section 1 of that Act include references to restrictions imposed by, or regulations made by, the grantees of the order with the consent of the Scottish Ministers.

PART FOUR: GENERAL

Section 90 – Equal opportunities

189. This section requires all persons (including organisations) who carry out their functions under this Bill to do so in a way which encourages equal opportunities and, in particular, the observance of the equal opportunities requirements. “Equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions. “Equal opportunity requirements” means the requirements of the law for the time being relating to equal opportunities.

Section 93 – Subordinate legislation

190. This section sets out the arrangements for the Scottish Ministers to make orders and regulations by statutory instrument under this Act and provides that, except where specified, these statutory instruments are to be made by negative resolution procedure, which is where the
instrument is laid after making and is subject to being annulled in pursuance of a resolution of Parliament passed within 40 days after laying.

**SCHEDULE 1: THE SCOTTISH POLICE SERVICES AUTHORITY**

191. Paragraph 2 establishes that the Authority is independent of the Crown.

192. Paragraph 3 sets out the membership of the Authority. Appointments are to be made by the Scottish Ministers. There are three different categories of member: police force members, who must be serving chief constables in a Scottish force; police authority members, who must be conveners of unitary police authorities or joint police boards; and lay members, who cannot be police officers or members of local authorities. The Board of the Authority will be appointed by the Scottish Ministers and must normally comprise between 7-10 people including a lay convener and, in addition, at least 2 of each category of member. However, under sub-paragraph (5), the requirement for there to be at least 2 members in each category falls if, in the opinion of the Scottish Ministers, adherence to this requirement would prevent the effective working of the Board (for example, if it were not possible to find more than one police authority/board convener or more than one chief police officer willing to serve on the Board). Police authority and police force members may be appointed by Scottish Ministers only if they are nominated for appointment by their representative bodies. Constables of police forces in the United Kingdom and Islands, members of local authorities and members of the Authority’s staff are disqualified from appointment as a lay member of the Authority.

193. Under sub-paragraphs (8) and (9), the Scottish Ministers may vary the overall size of the Board by order made by statutory instrument subject to negative resolution procedure, after having consulted the Authority and people who represent the interests of chief constables, unitary police authorities and joint police boards.

194. Paragraph 5 requires the members of the Board of the Authority to elect one of their number to be the deputy convener.

195. Paragraph 6 provides that each member may be appointed for such period as the Scottish Ministers may determine and may be re-appointed for a single further term also for such period as the Scottish Ministers determine. It also makes provision for resignations from the Board and establishes that a police member or local authority member ceases to be a member of the Board if they cease to be a chief police officer or a police authority/board convener, respectively.

196. Paragraph 7 empowers the Scottish Ministers to remove a member of the Board in any of a number of specified circumstances.

197. Paragraph 8 imposes a duty on every member of the Board to ensure that the Authority is run efficiently and effectively.

198. Under paragraph 9, the Scottish Ministers may determine rates of remuneration, allowances, expenses, pensions and gratuities which shall be payable by the Authority to present or former lay members of the Board, including the convener. Such payments may include
compensation where a person ceases to be the convener or a lay member other than on the completion of his or her term of appointment, but only if the Scottish Ministers consider that there are special circumstances which make it right to do so. Sub-paragraph (7) establishes that no remuneration, allowances or expenses can be made to police or local authority members of the Board.

199. Paragraph 10 requires there to be a Chief Executive who will report to the Board of the Authority. The Scottish Ministers will appoint the first holder of this post, after consulting people who represent the interests of chief constables, unitary police authorities and joint police boards, and also the convener of the Authority (if by then there has been an appointment to that post). Subsequent Chief Executives are to be appointed by the Board of the Authority subject to the approval of the Scottish Ministers. The Scottish Ministers will also determine the remuneration, allowances, expenses, pensions and gratuities which shall be payable by the Authority to the Chief Executive.

200. Paragraph 11 sets out provisions about the staffing of the Authority. The Authority’s staff may be employees or may be police officers on secondment. Police officers on secondment to the Authority (other than those appointed as members of the Agency – see paragraph 6 of schedule 2) will be on relevant services under section 38A(1)(bd) of the Police (Scotland) 1967 Act. Schedule 5 paragraph 1(4) and (5) makes the relevant consequential amendments to the provisions of the 1967 Act to set up the “relevant service” status of the seconded officers. In particular and in line with equivalent provisions in the 1967 Act for constables who are on “relevant” service with other bodies, the amendments provide that the constables continue to be constables during the period of their secondment and are treated for particular purposes as constables of their home force. The seconded constables are responsible to the Authority and their pay and conditions are to be set by the Authority, subject to the approval of the Scottish Ministers. Sub-paragraph (5) provides an order-making power for Scottish Ministers to apply and modify provisions of the Police (Scotland) Act 1967 and any regulations made under it to constables seconded to the Authority who are not police members of the Agency.

201. Paragraph 12 empowers the Authority to arrange pension schemes for its staff, other than the Chief Executive or the Director or Deputy Director of the Agency, for whom specific provision is made elsewhere in Schedules 1 and 2.

202. Paragraph 13 empowers the Board of the Authority to set up committees, and the committees to establish sub-committees. Each committee and sub-committee must be chaired by a member of the Board of the Authority, but may include people who are not members of the Board. Such people may be paid remuneration, allowances and expenses unless they are police officers or members of local authorities.

203. Paragraph 14 empowers the Authority to decide on procedural matters, including the quorum, for the Board, its committees and sub-committees. Determinations of the quorum can only be made at a meeting of the Board attended by the convener and at least 4 other members of the Board.

204. Paragraph 15 entitles the Board of the Authority to delegate functions either to committees or to staff, and the committees to delegate to either sub-committees or staff. The sole
exception is the function of issuing criminal record certificates under Part V of the Police Act 1997 (c.50). This function cannot be delegated to a committee or sub-committee.

205. Paragraph 16 gives the Authority flexibility in the way it carries out its functions, by empowering it to do anything which appears necessary or expedient or conducive to these functions. In particular, it may enter into contracts and may, subject to the consent of the Scottish Ministers, acquire or dispose of property (including accepting gifts or loans), borrow money or form companies (either alone or together with another party).

206. Paragraph 17 requires the Authority to keep accounts both for itself and for the Agency, and to prepare a statement of accounts at the end of each financial year, whose form and content must meet any specification issued by the Scottish Ministers. The Authority must send a copy of the accounts to the Scottish Ministers who must in turn send a copy to be audited by the Auditor General of Scotland.

SCHEDULE 2: MEMBERSHIP OF THE SCOTTISH CRIME AND DRUG ENFORCEMENT AGENCY

207. Section 12(1)(a) provides for the appointment of a Director and Paragraphs 1(1) and (2) provide that the first Director should be the Director of the SDEA in post when the Act comes into force and that the continuation of the current Director’s appointment should be until the expiry of the existing term. Subsequent Directors will be appointed by the Authority and paragraph 1(3)(b) provides that the Director may hold office for a term of three years and paragraph 1(5) enables this term to be extended by the Authority by a single period not exceeding three years. Paragraph 1(6) provides that a member of the Authority may not hold the office of Director and paragraph 1(6A) makes it clear that only persons who already hold the rank of Deputy Chief Constable or who are eligible to apply for a post of that rank and satisfy any requirements Scottish Ministers may set out in regulations may be appointed to the post of Director. An appointment to the post is deemed to be a promotion to the rank of Deputy Chief Constable by virtue of paragraph 1(6B). Paragraph 1(7) gives the Scottish Ministers the power to change the rank of the Director’s post by order made by statutory instrument subject to negative procedure.

208. Section 12(1)(b) provides for the appointment of a Deputy Director and paragraphs 2(1) and (3) provides that the Deputy Director will be appointed by the Authority and will hold the office for a term of three years which may also be extended by a further single period not exceeding three years by the Authority. Paragraph 2(4) provides that a member of the Authority may not hold the office of Deputy Director and paragraph 2(4A) makes it clear that only persons who already hold the rank of Assistant Chief Constable or who are eligible to apply for a post of that rank and satisfy any requirements Scottish Ministers may set out in regulations may be appointed to the post of Deputy Director. An appointment to the post is deemed to be a promotion to the rank of Assistant Chief Constable by virtue of paragraph 2(1)(4B). Paragraph 2(5) gives the Scottish Ministers the power to change the rank of the Deputy Director’s post by order made by statutory instrument subject to negative procedure.

209. Paragraph 3 sets out the circumstances in which the appointment of the Deputy Director or the Director can be terminated or suspended. Paragraph 3(1) gives the Authority the power to
dismiss the Deputy Director and Director or require them to resign or retire on the grounds of efficiency, effectiveness or misconduct.

210. Paragraph 3A sets out the common appointment provisions in relation to both the Director and Deputy Director. These are that the post holders are appointed subject to such terms and conditions as Scottish Ministers may specify and on appointment become members of staff of the Authority. If the Director or Deputy is seconded from a Scottish police force they will be engaged on relevant service within the meaning of the Police (Scotland) Act 1967. If they are not so seconded they will on appointment be appointed to the office of constable of the Agency and will require to make a declaration as determined by Scottish Ministers in a similar manner to the directly recruited police members.

211. Paragraph 5 provides that the Deputy Director may carry out the functions of the Director during any absence, incapacity or suspension from duty or during any vacancy in the office of Director.

212. Paragraph 6 sets out that police members of the Agency will be appointed by the Authority after consultation with the Director and may either be a constable who is on secondment in accordance with paragraph 11(2) of schedule 1 or someone who is appointed to a police rank in the Agency in line with the Agency’s qualification for appointment regulations. Sub-paragraph (3) provides that a constable who is seconded will be on relevant service for the purposes of section 38A(1)(be) of the 1967 Act and will remain a member of staff of the Authority. Sub-paragraphs 6(4) make special provision for the police members of the Agency who are directly recruited. In particular these members are appointed to the office of constable of the Agency and they must make a similar declaration to that made by Scottish constables on appointment under section 16 of the 1967 Act. Paragraph 6(5) provides that the directly recruited constables will have all the powers and privileges of a constable throughout Scotland.

213. Paragraph 7 makes provisions for the Authority to appoint support staff members to the Agency. The support staff members will be employees of the Authority and continue to be members of staff of the Authority, notwithstanding that they are also members of the Agency.

214. Under paragraph 8, the Scottish Ministers will have power by order made by statutory instrument to apply appropriate provisions of the 1967 Act to the Director, Deputy Director and police members of the Agency.

SCHEDULE 3: TRANSFERS OF STAFF AND PROPERTY

215. Paragraphs 2 – 4 set out the arrangements for the transfer to the Authority and the Agency of constables and other (“support”) staff working in the existing common services and parts of the Scottish police forces whose functions are to be taken on by those organisations.

216. Under paragraph 2, the Scottish Ministers may make a “staff transfer order” to effect this transfer. Such an order will provide for the transfer of police officers who are currently on secondment to the common services and “support” staff on secondment from police authorities or joint police boards to the Authority; and for the transfer of staff on central service from the
These documents relate to the Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2 (SP Bill 46A)

Scottish Ministers to the Authority. The order will also specify which constables and support staff transferred will also become members of the Agency.

217. Once the Scottish Ministers have made a staff transfer order, sub-paragraphs (4)-(8) provide for duties to be placed on the former “employer” (including police authority or joint police board for police officers in a police force) of transferred staff, to set out the detail of their own staff transfer arrangements including the terms and conditions for the constables who are to be seconded to the Authority.

218. Paragraph 3 requires the Scottish Ministers to consult the Authority and, where relevant, the Director of the Agency before making a staff transfer order. Likewise, sub-paragraph (2) requires police authorities and joint police boards to consult the Authority and, where relevant, the Director of the Agency before making a scheme in connection with transfer of their staff.

219. Paragraph 4 makes a number of provisions concerning employees of police authorities or joint police boards who are subject to a staff transfer order. Sub-paragraphs (2)-(4) establish that contract rights and obligations transfer from the former employer to the Authority on the transfer date. Sub-paragraph (5) provides that employed staff may object in advance of their contract being transferred to the Authority, in which case their contract is terminated at the end of the day before the intended transfer day. This termination will not be treated as dismissal of a person for the purposes of legislation. Sub-paragraph (7) provides that an employee can only terminate their contract of employment by virtue of the staff transfer if they can show that the change of employer was both significant and detrimental.

220. Paragraph 5 makes similar provisions in respect of transfer to the Authority of property, rights and liabilities (including rights and liabilities that may arise from ongoing legal proceedings). This transfer will be effected by a transfer scheme made by the Scottish Ministers after consultation with the Authority and those police authorities or joint police boards with property, rights or liabilities to be transferred.

**SCHEDULE 4: THE POLICE COMPLAINTS COMMISSIONER FOR SCOTLAND**

221. Paragraph 1 outlines the status of Commissioner, confirming that the Commissioner is not a servant or agent of the Crown and does not therefore have the status, immunities or privileges of such.

222. Paragraph 2 outlines the reasons for which someone would be disqualified from holding the post of Commissioner. This would include someone who was an MP, MSP, MEP or member of the House of Lords, current and former police officers and police staff and employees of the Serious Organised Crime Agency and its predecessors.

223. Paragraphs 2 to 5 lay out the terms and conditions of appointment for the position of Commissioner, the reasons for which a Commissioner can be removed from office, and arrangements regarding the salary, allowances and pensions.
These documents relate to the Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2 (SP Bill 46A)

224. Paragraph 6 allows the Scottish Ministers to appoint an acting Commissioner to carry out the functions of the Commissioner should the position fall vacant. The paragraph also sets out why someone might be disqualified from being appointed acting Commissioner and details regarding the terms and conditions of such an appointment.

225. Paragraph 7 allows the Commissioner to appoint staff and set the terms and conditions for those staff, including the making of pension contributions. The Commissioner can also make arrangements for the payment of pensions, etc to anyone who ceases to be a member of staff, including as compensation for loss of employment.

226. Paragraph 8 allows the Commissioner to do anything which appears necessary in order to carry out the Commissioner’s functions. This includes entering into contracts.

227. Paragraphs 9 and 10 allow the Scottish Ministers to pay the salary and allowances of the Commissioner (or an acting Commissioner) and any other sums that they consider necessary to allow the Commissioner to carry out his or her functions. Duties are placed on the Commissioner who must keep proper records, prepare annual accounts and send a copy of those accounts to the Auditor General for Scotland for auditing.

228. Paragraph 11 places a duty on the Commissioner to provide the Scottish Ministers with any information and documents they consider necessary to satisfy themselves that the functions of the Commissioner are being carried out efficiently and effectively.

SCHEDULE 4A: SECTION 49(2)(B): RELEVANT EVENTS ETC.

229. This schedule sets out the relevant events and the corresponding prescribed information that must be provided when each relevant event occurs for the purposes of section 49(2)(b), and also provides definitions of the terms used.

SCHEDULE 5: MODIFICATIONS OF ENACTMENTS

230. Part 1 of the schedule makes consequential amendments to various Acts. It amends the relevant service provisions in sections 38 and 38A 1967 Act that relate to the status of the seconded officers to the Authority and the Agency. It makes a number of minor typographical corrections to existing provisions of the 1967 Act and also a minor typographical correction to the Criminal Justice Act 1988. It also provides for a tidying up repeal of those sections of the Police (Scotland) Act 1967 and the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 which refer to two-tier penalties for assaulting a police officer. Two-tier penalties were abolished in 1982 but were not removed from these acts, despite having no effect.

231. Paragraphs 3B, 4A and 4B make consequential amendments to Part III of the Police Act 1997, the Regulation of Investigatory Powers Act 2000 and the Regulation of Investigatory Powers (Scotland) Act 2000 to take account of the creation of the Scottish Crime and Drug Enforcement Agency (SCDEA) to replace the SDEA, and also to provide the Director of the SCDEA with the powers to authorise the use of intrusive surveillance and property interference in relation to SCDEA operations. They also amend the rules for granting authorisations in both
pieces of legislation to reflect the re-introduction of the rank of Deputy Chief Constable (DCC) by the Criminal Justice (Scotland) Act 2003.

232. Paragraph 4 adds the Authority to the list of devolved public bodies to which the Ethical Standards in Public Life (Scotland) Act 2000 applies.

233. New paragraph 4C adds the Police Complaints Commissioner for Scotland to the list of bodies over which the Scottish Public Services Ombudsman has jurisdiction. This means that the Ombudsman will be able to review any complaints of maladministration or service failure made against the Police Complaints Commissioner. This paragraph also amends the Scottish Public Services Ombudsman Act 2002 to ensure that the PCCS is the only body with responsibility for non-criminal complaints made against police organisations.

234. Paragraph 5 adds the Police Complaints Commissioner for Scotland and the Scottish Police Services Authority in respect of information relating to the services they provide under section 3(2) only to the list of Scottish public authorities to which the Freedom of Information (Scotland) Act 2002 applies.

235. Paragraph 6 adds the Authority to the list of specified authorities to which the Public Appointments and Public Bodies (Scotland) Act 2003 applies.

236. Paragraph 7 substitutes references to the SDEA within the Serious Organised Crime and Police Act 2005 with references to SCDEA and in addition ensures that those previously covered by the protection of witness provisions in the Serious Organised Crime and Police Act 2005 i.e. the Director of SDEA and those under his direction and control, continue to be covered as well as adding the Director of the SCDEA and those under his direction and control.

237. Part 2 of schedule 5 makes an amendment to subordinate legislation under the Regulation of Investigatory Powers (Scotland) Act 2000, consequential on the changes to that Act that are made by paragraph 4B of part 1 of schedule 5.

FINANCIAL MEMORANDUM

INTRODUCTION

238. As required under Rule 9.7.8B of the Parliament’s Standing Orders, this revised Financial Memorandum is published to accompany the Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2. It has been prepared by the Scottish Executive in order to satisfy Rule 9.3.2 of the Parliament’s Standing Orders in relation to the Bill as amended at Stage 2. It does not form part of the Bill and has not been endorsed by the Parliament.
CONSULTATION

239. The main consultation document for this Bill, Supporting Police, Protecting Communities: Proposals for legislation, was issued by the Scottish Executive in February 2005. It sought views on a range of proposals designed to improve police effectiveness and enhance community safety, all of which are now included in this Bill and described in this memorandum. 67 responses were received in total, 14 from private individuals and 53 from organisations including 12 local authorities, 11 football or football supporters’ organisations, and 8 police or police authority organisations. 18 responded on all of the issues in the consultation paper and, due to the varied nature of the policies in the paper, 48 responded on one or some of the policies. One did not respond to any of the topics but made other comments about the Police Bill.

240. A separate consultation exercise took place earlier in connection with the proposals, described in this memorandum, on enforcement of fireworks offences. Consultation is also being taken forward separately regarding allowances to special constables.

241. A further separate consultation took place in early 2006 on proposed legislation giving powers to improve the enforcement of orders under section 1 of the Sea Fisheries (Shellfish) Act 1967.

242. Where respondents to the consultations made comments about resource implications, these are reflected in this memorandum. The issue of resources was particularly prominent in connection with the proposals for mandatory drugs testing, but largely peripheral in the responses on other issues.

HOW POLICE COSTS ARE RECORDED IN THIS MEMORANDUM

243. Each section of this document identifies estimated costs or savings to police forces as well as to the Scottish Administration, local authorities, other bodies, individuals and businesses. These represent the costs or savings to the general policing budget held by police authorities or joint police boards, who fund their local police force. Fife and Dumfries and Galloway Councils are the police authorities for their respective areas. In other areas of Scotland the equivalent functions are carried out by a joint police board which comprises representative members of the various local authorities which make up the force area. Police authorities and joint police boards are therefore part of Local Government, but for simplicity and clarity, throughout this document, “General Costs on Police Forces” are shown separately, and distinguished from other costs on local authorities.

244. The general budgets for police forces, held by police authorities and joint police boards, are in turn funded by the Scottish Administration and local authorities. General funding for Scottish police forces (just over £1bn in 2005-06) is split between ring-fenced Police Grant from the Scottish Executive (51%) and local authority funding (49%) (with the local authority share itself substantially supported by the Executive through Revenue Support Grant). The only exception to the 51/49 split comes if a police authority or joint police board decides to set a budget for its force above the ‘Police Grant-Aided Expenditure’ level suggested by the Executive. In that event, the excess is met wholly by the local authorities.
245. For clarity and to avoid double counting, the estimates shown for the Scottish Administration and local authorities, in the individual sections of this memorandum, exclude any shares of the estimates of General Costs on Police Forces.

246. In addition, the Executive also provides some additional direct funding to police authorities and joint police boards, both as Capital Grants (£31m in 2005-06) and as additional recurrent funding. This latter funding mechanism is normally used to fund particular initiatives, often on a short-term basis and/or where the funding is ring-fenced for particular projects. It is expected that one or other of these direct funding mechanisms would meet the costs described in this memorandum for allowances for special constables and for the capital costs of fingerprint readers. These are therefore shown as “Costs on the Scottish Administration” rather than “General Costs on Police Forces”.

**SUMMARY OF COST IMPLICATIONS OF THE BILL**

247. The tables below summarise the costs resulting from the Bill, which are identified in the remainder of this memorandum. Recurrent costs are shown in the middle column of the table, with non-recurrent costs (and other relevant comments) shown in the final column. Unless otherwise indicated all the recurrent costs are expected to begin from financial year 2007-08.

**General Costs on Police Forces (51% from Executive, 49% from Local Authorities)**

<table>
<thead>
<tr>
<th>Cost Description</th>
<th>Amount</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>More reviews of complaints</td>
<td>£100k</td>
<td>Paragraph 267. Should be offset by savings in due course.</td>
</tr>
<tr>
<td>Football Banning Orders</td>
<td>£160k</td>
<td>Paragraph 279.</td>
</tr>
<tr>
<td>Additional reports to the Crown Office and Procurator Fiscal Service arising from fireworks offences</td>
<td>£3k</td>
<td>Paragraph 319.</td>
</tr>
<tr>
<td>Saving of patrol time from use of fingerprint readers</td>
<td>-£2,000k</td>
<td>Paragraph 340.</td>
</tr>
<tr>
<td>Time and materials for conducting drugs tests</td>
<td>£122k</td>
<td>Paragraphs 350-351 A non-recurrent further £9k would be required for start-up costs of the pilot.</td>
</tr>
<tr>
<td>Additional investigation costs as a result of sentence reduction and immunity from prosecution</td>
<td>£65k</td>
<td>Paragraph 363.</td>
</tr>
</tbody>
</table>

**Total** -£1,550k

248. A net saving of £1,550,000 per annum on general policing costs would imply a notional saving of £790,000 to the Scottish Executive (51% of the total) and £760,000 to local authorities (49%). However, these savings would be in terms of time released for other duties and would not be realisable in cash by the Executive or local authorities unless police budgets were reduced accordingly. For this reason, these savings have not been netted off the other costs to the Scottish Administration and the local authorities, shown in the tables below.
### Costs on the Scottish Administration

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Costs</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of the Scottish Police Services Agency</td>
<td>£70k</td>
<td>Paragraph 249. These are immediate costs, beginning around October 2006. In the longer term, likely to be at least offset by efficiency savings.</td>
</tr>
<tr>
<td>Senior Strategic Officer</td>
<td>£100k</td>
<td></td>
</tr>
<tr>
<td>Police Complaints Commissioner</td>
<td>£1,000k</td>
<td>Paragraph 269. Would be higher, perhaps £1.5m, in the set-up year 2007-08</td>
</tr>
<tr>
<td>Payments to special constables</td>
<td>£750k</td>
<td>Paragraph 274.</td>
</tr>
<tr>
<td>Football Banning Orders: procurator fiscal, courts and legal aid</td>
<td>£81k</td>
<td>Paragraph 286.</td>
</tr>
<tr>
<td>Higher penalty for carrying a knife: additional prison costs</td>
<td>£150k</td>
<td>Paragraph 313.</td>
</tr>
<tr>
<td>Additional procurator fiscal, courts and legal aid costs arising from prosecutions for fireworks offences</td>
<td>£24k</td>
<td>Paragraph 320.</td>
</tr>
<tr>
<td>Capital costs of fingerprint readers</td>
<td>Non-recurrent</td>
<td>Paragraph 342. £2m per annum for 2 years</td>
</tr>
<tr>
<td>Assessments and treatments for drug-related offenders</td>
<td>£1,660k</td>
<td>Paragraphs 355 and 358. Subject to review following 2-year pilot.</td>
</tr>
<tr>
<td>Additional procurator fiscal, courts legal aid and prison costs (net) as a result of sentence reduction and immunity from prosecution</td>
<td>£160k</td>
<td>Paragraph 374.</td>
</tr>
<tr>
<td>Additional witness protection costs as a result of sentence reduction and immunity from prosecution</td>
<td>£200k</td>
<td>Paragraph 375.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£4,195k</strong></td>
<td></td>
</tr>
</tbody>
</table>

### Costs on Local Authorities

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Costs</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improved control of public processions</td>
<td>£200k</td>
<td>Paragraph 309.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£200k</strong></td>
<td></td>
</tr>
</tbody>
</table>

### Costs on Other Bodies, Individuals and Businesses

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Costs</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fisheries enforcement by Regulating Order grantees</td>
<td>£300k</td>
<td>Paragraph 383. Recurrent from 2008-09. Could rise further if more Regulating Order fisheries are established.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£300k</strong></td>
<td></td>
</tr>
</tbody>
</table>
249. Where there may be other marginal implications for other bodies, individuals and businesses, comments on these are made within the individual sections of this memorandum.

250. It is intended that a number of measures set out in the Bill will contribute to a reduction in violence and crime in the long term. This has the potential to reduce the demands on the police and other elements of the criminal justice system, but it would be premature to anticipate any cost savings.

SCOTTISH POLICE SERVICES AUTHORITY AND SCOTTISH CRIME AND DRUG ENFORCEMENT AGENCY

251. This part of the Bill will establish the Scottish Police Services Authority (“the Authority”) as a body corporate and will also provide for the Authority to establish and maintain the Scottish Crime and Drug Enforcement Agency (“the Agency” and formerly the SDEA). Both bodies will be wholly funded by the Scottish Executive. Any new costs associated with these changes will therefore fall on the Scottish Executive.

252. The Bill will introduce new, simplified funding arrangements for the police support services (“common services”), making them fully funded by the Scottish Executive rather than, in some cases, jointly funded by the Executive and police authorities and joint police boards. These revisions to the funding mechanisms will not in themselves make any difference to the costs of these services. And where responsibility for funding particular services is changed as a result of this Bill, budget adjustments between the various parties will be made, in order to ensure a cost-neutral position overall.

253. For completeness, this section of this memorandum includes estimates of the amounts of financial responsibility and budget which will transfer from police authorities and joint police boards to the Executive. However, as these sums do not represent new financial burdens or savings to either party, they have been omitted from the summary of costs in the tables above. The only new costs will be those met by the Executive, described in paragraph 194.

General Costs on Police Forces

254. There will be no new net costs on Police Forces from this part of the Bill.

255. However, the Bill will introduce changes in the sources of funding for the common police services. The current position is:

- Historically, the greater part of the funding for the common services has been split 50:50 between the Executive and police authorities and joint police boards, although since 2004-05 funding has been 100% by the Executive.

- Part of the SDEA is funded by the Executive but its Operational and Intelligence Group, which comprises the greater part of the budget, is funded jointly by the Executive and police authorities/joint police boards, in two ways: the funding for OIG police officers is provided 50:50 between the Executive and police authorities/joint police boards; and the funding for OIG support staff is funded by the
Executive, with a 50% contribution then recovered from police authorities/joint police boards.

- The forensic science service is currently funded from within general police funding (which itself comes 51% from the Executive and 49% from local authorities). The Executive’s consultation on the Police Bill had proposed that simpler funding mechanisms should be introduced for all of these services, with the SDEA being funded 50:50 and all the other services funded wholly by the Executive. There was a mixed response to these proposals. The great majority of respondents, with the exception of COSLA, supported 50:50 funding for the Agency, while a significant number also supported 50:50 funding for the common services across the board. For its part, COSLA expressed concern that if the whole of the Agency’s costs were funded on a 50:50 basis, and rose at greater than the level of inflation, in the long term that could have a detrimental impact on the delivery of other services by local authorities. Taking account of these various issues, and in particular the case for funding arrangements which deliver the maximum degree of simplicity, certainty and stability for the common services as a whole, the Executive has concluded that the best way forward is to provide 100% Executive funding for both the Authority and the Agency.

256. The net effect, compared with the funding position in 2005-06, is that police authorities and joint police boards will cease to be responsible for forensic services and for meeting a share of the Agency’s costs. Adjustments will be made to ensure that budgets are amended in line with the new distribution of funding responsibilities.

Costs on the Scottish Administration

257. As noted above, the Bill will establish the Authority as a body corporate and will also provide for the Authority to establish and maintain the Agency (formerly the SDEA). As a result there will be new accountability and management mechanisms to oversee each of the existing common police services and the Agency.

258. In 2005-06, the budgets for the various common services were as follows:

- Scottish Police College £12.45m (excluding receipts of £600k)
- Scottish Criminal Record Office £9.8m
- Scottish Police Information Strategy £3.0m
- Scottish Drug Enforcement Agency £21.1m
- Forensic science services (estimated)* £20m

*this includes Identification Bureaux and scenes of crime officers.

259. The combined recurrent cost of the common police services and the SDEA is therefore about £66m, and the component organisations have a full time equivalent complement of nearly 1300 staff. The new costs will amount to only £170,000, which is 1/4% of the overall budget. The cost of remuneration and expenses for the Convener and lay members of the board of the
Authority may amount to an estimated **£70,000 per annum**. The new post of Senior Strategic Officer would add a further **£100,000 per annum**, with both costs beginning mid-way through the preparatory year 2006-07. It is possible that there may be additional staff or other costs depending on what decisions the SSO takes about the recruitment of support staff or office accommodation, but it is not possible to quantify these costs as they would depend on decisions taken by the SSO when he or she is appointed.

260. It is expected that bringing together the various common police services in a combined organisation will in due course allow scope for eliminating duplication in back office services and achieving consequential savings, although it is not possible at this stage to estimate the amount of savings which could be realised. There may also be ‘once off’ start up costs resulting from bringing together the various existing services into a single body, for example if new financial management or accounting systems are required, but once again this depends on assessments made and decisions taken much nearer the time. Overall, it is hoped that the relatively small costs associated with the establishment of the new body will at least be offset by the savings which can be realised by bringing the common services into a single body.

261. The modest administrative costs identified above are the only new costs which will arise as a direct result of this chapter of the Bill. The running costs for the SDEA and the various common police services - the Scottish Police College, Scottish Criminal Record Office, Scottish Police Information Strategy, and Forensic Science Service – will not be directly affected by the new management and accountability structure. It will of course be open to the Board of the Authority to move money between the various common services it provides or to bid for greater resources, subject to any terms and conditions which are attached by the Scottish Ministers in relation to the Authority’s grant. The amount of the Agency’s grant will be set by the Scottish Ministers.

**Costs on Local Authorities**

262. This part of the Bill has no non-policing financial implications for local authorities.

**Costs on Other Bodies, Individuals and Businesses**

263. This part of the Bill has no financial implications for other bodies, individuals or businesses.

**INDEPENDENT POLICE COMPLAINTS BODY**

**General Costs on Police Forces**

264. There will be marginal costs on police forces as a result of these provisions.

265. The main functions of police forces in respect of handling and responding to complaints will continue as before. Police forces will support procurators fiscal in the investigation of criminal complaints, and will take the lead in investigating complaints against officers in their own force or, in some cases, other forces. They will continue to respond to complaints about the quality of service provided by the force which are not concerned with an individual officer.
266. Where a complainer is not satisfied with the initial response, it is already possible to appeal to have the handling of a complaint re-examined, by Her Majesty’s Inspectorate of Constabulary (HMIC). However, given the new role of the Police Complaints Commissioner for Scotland, it is anticipated that there will in future be a greater number of complaints – both in respect of individuals and in respect of quality of service - which require to be reconsidered, in some cases under supervision by the Commissioner.

267. The most recent figures produced by HMIC show that, in 2002/03, Scottish police forces received 2823 complaint cases. 4% or 113 of these cases were referred to HMIC by dissatisfied complainers. If we assume that the existence of a new, independent body will encourage a further 10% of those who have complained to take their complaint further, then the PCCS could receive an additional 282 referrals every year. That would bring the total to around 400, although there is a significant margin of uncertainty around that total. The action by the PCCS would vary. For many of these the follow-up may consist merely of brief enquiries to the force to satisfy the Commissioner’s interest; but in some, the Commissioner would instigate a more wide ranging review. The re-handling of these complaints would have some resource implications for Police Forces. Overall it is anticipated that forces might need to reconsider an additional 100 cases at an average cost of no more than £1000 per case. The effect on police funding would therefore be around £100,000.

268. However, offset against this will be the benefits to police forces from having a clearly independent mechanism for reviewing the handling of complaints. This should lead to the earlier resolution of some complaints. The new Commissioner will also support police forces to develop a more systematic approach to quality of service complaints and help drive up the already high standards for complaints, delivering a system that continually strives to be more effective and efficient.

Costs on the Scottish Administration

269. The Scottish Executive will fund the establishment of the Police Complaints Commissioner for Scotland, including staffing and accommodation. We anticipate that besides the Commissioner, this will require about 10 full time equivalent staff. Its functions will be similar to those of the Legal Services Ombudsman, whose running costs are around £700,000 per annum for an office with 7 staff. On this basis we estimate that the annual running costs of the office will be around £1.0m per annum. In the initial year, 2007-08, the costs may exceed this owing to set-up costs, and could be as high as £1.5m.

Costs on Local Authorities

270. This part of the Bill has no non-policing financial implications for local authorities.

Costs on Other Bodies, Individuals and Businesses

271. This part of the Bill has no financial implications for other bodies, individuals or businesses. There will be benefits to some who, under the new arrangements, find it easier to obtain a satisfactory review or reconsideration of their complaint. But these benefits will typically not be of a financial nature.
PAYMENTS TO SPECIAL CONSTABLES

General Costs on Police Forces

272. This aspect of police force funding will be provided 100% by the Executive, rather than through general police funding.

Costs on the Scottish Administration

273. Special Constables play a valuable part within Police Forces, acting with and in support of regular constables in a variety of operational duties. Under current arrangements, they are paid certain allowances only. However, there has been a long term decline in the numbers of people volunteering to be special constables in Scotland. The purpose of this new legislation is to clarify the basis upon which Police Forces can pay a modest allowance to special constables in return for their commitment to a certain number of duties. This clarification is required because the current range of allowances is largely geared around compensating for out of pocket expenses, whereas this new allowance will be concerned with rewarding Special Constables for their time commitment. The intention is to improve recruitment and retention and to make it easier for forces to plan more meaningful deployment of specials.

274. The costs of this provision will therefore depend on the number of existing specials who opt to join the scheme, and the number of new specials who are recruited under these new terms. Experience from the pilot suggests that about 500 of the current 1000 specials will both meet the conditions for the allowance and opt into the scheme, each receiving a payment of £1000. As a result, the immediate cost of the allowances will be £500,000. This is expected to rise as the scheme encourages new recruits, the majority of whom are likely to receive the allowance. The number of specials receiving the allowance could therefore rise to around 750 following the introduction of this legislation. This would equate to a total cost of £750,000 per annum, and would purchase a minimum of 135,000 hours of duty time for deployment on community policing and other tasks. In the longer term the cost could rise even further if the scheme is successful and serving Special Constables who previously opted out decide to opt in. This could bring the total cost up to around £900,000.

Costs on Local Authorities

275. This part of the Bill has no non-policing financial implications for local authorities.

Costs on Other Bodies, Individuals and Businesses

276. This part of the Bill has no financial implications for other bodies, individuals or businesses.

FOOTBALL BANNING ORDERS

Background

277. On average, it is estimated that up to 100 Football Banning Orders (FBOs) will be imposed each year, with eventually an estimated maximum of 300 orders in force in Scotland at
any one time. This is based on a best estimate provided by the police of the numbers they would expect to merit a banning order once they are up and running. We estimate that around 60 per year will be imposed in the civil courts following a summary application by a Chief Constable and 40 in the criminal courts following conviction for a football-related offence.

Costs on the Scottish Police service

278. There will be costs to the Police in terms of administering the banning orders by the enforcing authority which will be a part of Strathclyde Police. The estimated 300 orders in force in Scotland at any one time is about one tenth the size of the corresponding figures for England and Wales, where administration of the system costs around £200,000 per annum. Given diseconomies of scale, the administration of Scottish football banning orders could cost around £40,000 per annum once the system is up and running.

279. There will also be costs on individual police forces of making applications for the civil orders. Based on experience in England and Wales, the average cost of making a summary application for a Football Banning Order will be about £2,000 per application. For 60 of these applications per year, this would cost the Scottish police service in the region of £120,000 per annum. The police will not incur costs in applying for the 40 orders per year imposed in the criminal courts because the orders will simply be additional disposals at the end of court cases that would have taken place anyway.

Summary

<table>
<thead>
<tr>
<th>Scottish Police Forces</th>
<th>Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td>£40,000</td>
</tr>
<tr>
<td>Summary application for FBOs</td>
<td>£120,000</td>
</tr>
<tr>
<td>Total</td>
<td>£160,000</td>
</tr>
</tbody>
</table>

280. The availability of Banning Orders will have other, indirect, implications for the costs of football policing in Scotland. In the short-term it is likely that some forces will choose to increase the resources devoted to this issue, to secure Banning Orders against key individuals. (Indeed, it is understood some forces have already started to do this to prepare to take advantage of banning orders when available.) On the other hand, beyond the initial period there should be a net saving in the costs of football policing, because known troublemakers will be prevented from attending matches and because others contemplating violence will face a disincentive to indulge in such behaviour. Such decisions are operational matters for chief constables and no assumptions have been made about either the short-term additional costs or the long-term savings which may be realisable.

Costs on the Scottish Administration

Background and summary

281. Football Banning Orders will attract a number of court and legal aid costs. In making it clear what these are for, it may be helpful to set out what the court procedures around Football Banning Orders will be and how they will work.
282. There will be two routes for imposing an FBO – civil and criminal. Only the former will attract significant court and legal aid costs at the point when the initial action is taken. A court decision to impose an Order in a criminal court would carry no additional costs because the order would simply be an additional disposal at the end of a court case.

283. However, for both civil and criminal orders, there will be further court and legal aid costs arising from appeals; from applications for variation of the terms (by either the banned person or the police); and from applications for early termination. Secondly, whenever the terms of an Order are breached, there may be prosecution, courts and legal aid costs in respect of this offence.

284. People subject to Football Banning Orders will also be able to apply (to the police, acting as the enforcing authority) for temporary exemptions from certain requirements of their banning order and will in theory be able to appeal to a court against a refusal by the enforcing authority to grant an exemption. This last has never happened in England and Wales – on only around 20 occasions has an application for an exemption been refused and none of these cases was appealed to the courts. This suggests it is unlikely to happen in Scotland either and therefore no costs are expected.

285. Overall, on the assumption of 60 orders per year in the civil courts and 40 in the criminal courts, with assumptions on the numbers of appeals, variations, early terminations and breaches, the total estimated costs on the Scottish Administration are shown in the table below. The succeeding paragraphs set out the detailed assumptions which generate these figures. The various unit cost assumptions have been provided by the Scottish Court Service, Scottish Legal Aid Board and Crown Office and Procurator Fiscal Service, respectively.

<table>
<thead>
<tr>
<th>Scottish Court Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Function</td>
</tr>
<tr>
<td>Civil Football Banning Orders</td>
</tr>
<tr>
<td>Criminal Football Banning Orders</td>
</tr>
<tr>
<td>Breach of Orders</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Scottish Legal Aid Board</th>
</tr>
</thead>
<tbody>
<tr>
<td>Function</td>
</tr>
<tr>
<td>Civil Football Banning Orders</td>
</tr>
<tr>
<td>Criminal Football Banning Orders</td>
</tr>
<tr>
<td>Breach of Orders</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Crown Office and Procurator Fiscal Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Function</td>
</tr>
<tr>
<td>Civil Football Banning Orders</td>
</tr>
<tr>
<td>Criminal Football Banning Orders</td>
</tr>
<tr>
<td>Breach of Orders</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>
286. Overall, the total costs to the Scottish Administration are estimated as £80,653 or around £81,000 per annum.

Detailed assumptions - Civil Football Banning Orders

287. As noted above, we expect 60 orders to be imposed by the civil route each year. Costs will apply to the Scottish Court Service and the Scottish Legal Aid Board.

Scottish Court Service – comprising both judicial salaries and Court Service running costs

288. 60 applications at an average cost of £53 per case gives a cost of £3,180. As around 1.5% of sentences or sentences and convictions are appealed against, we anticipate 1 of these being appealed to the Sheriff Principal (cost £416) and 1 to the Court of Session (cost £1111). We would not expect more than 5% of football banning orders imposed on summary application to attract applications for variations, which would be, in this case, a maximum of 3 cases per year, at a cost of £53 each, giving a cost of £159. Based on figures from England and Wales, we would not expect more than 2% of banning orders to attract applications for terminations, or one civil case per year at a cost of £53. This gives a total estimated cost to the civil courts of £4,919 per annum.

Scottish Legal Aid Board

289. The Scottish Legal Aid Board advise that on average 66% of civil cases attract legal aid, which in this instance would be around 40 cases per year. 40 cases in a Sheriff court could cost the Legal Aid fund an average of £1,308 each (this was the average cost of cases in the SLAB “other” category in 2003/04), giving a cost of £52,320. As above, we would expect 1 appeal to the Sheriff Principal (average £3,039) and 1 appeal to the Court of Session (average £6,010); 2 out of 3 applications for variations to attract legal aid (£1,308 each); and one termination application per year, also at a cost of £1,308.

290. The total cost to the civil legal aid fund could therefore be around £65,293 per annum.

Detailed assumptions - Criminal Football Banning Orders

291. As noted above, we expect 40 orders to be imposed by the criminal route each year. Costs will apply to the Scottish Court Service and the Scottish Legal Aid Board. There would be no additional costs to the Crown Office and Procurator Fiscal Service because the evidence presented to the court will be the same for the Banning Order as for the alleged offence.

Scottish Court Service - comprising both judicial salaries and Court Service running costs

292. For the criminal courts, the 40 anticipated summary cases themselves will not attract additional costs due to Football Banning Orders because the order will simply be an additional disposal at the end of a court case that would have happened anyway. The cost of appeals is built into the cost estimates for the overall case and any appeal would most likely be against the conviction and sentence as well as the banning order and thus should not attract significant additional costs. Under the same assumptions as for civil orders above, we would expect 2
applications for variations per year which would cost £448. On the same assumption as for civil cases, above, we would expect one criminal case per year to attract an application for termination, at a cost of £224.

293. This gives a total cost to the criminal courts of **£672 per annum**.

_Scottish Legal Aid Board_

294. There will be no increase in legal aid costs for the summary proceedings as the football banning order will simply be an additional disposal at the end of a court case that would have happened anyway.

295. On the assumptions set out above, we would expect 1 appeal to the High Court at an average cost of £2,496. This estimate is the entire cost of the appeal, although the appeal could also be about the conviction or other disposal of the case. The average fixed cost to SLAB for summary proceedings is £687. On the assumptions set out above, we would expect one application each for variation and for termination, per year, each incurring legal aid at a cost of £687.

296. This gives a total estimated cost to the criminal legal aid fund of around **£3,870 per annum**.

_Detailed assumptions - Breach of banning orders_

297. Based on figures from the Home Office on arrests for the breach of English and Welsh banning orders, we can assume that a maximum of 5% of football banning orders and additional requirement orders will lead to arrests for breach of the orders. 5% of 100 cases gives us 5 cases per year. Costs will apply to the Scottish Court Service, the Crown Office and Procurator Fiscal Service (for prosecuting breaches of orders) and the Scottish Legal Aid Board.

_Scottish Court Service_

298. The 5 summary cases for breach of banning orders would cost £224 per case in judicial salaries and SCS running costs, giving a total of **£1,120 per annum**. The cost of appeals is built into the cost estimates for the overall case.

_Scottish Legal Aid Board_

299. As noted above, the average fixed cost to SLAB of a summary criminal case is £687. The cost to the criminal legal aid fund for criminal cases related to the breaches of banning orders could therefore be in the region of **£3,435 per annum**.

_Crown Office and Procurator Fiscal Service_

300. Each of 5 summary cases would attract costs to the fiscal of £310. The total would be **£1,550 per annum**.
Costs on Local Authorities

301. This part of the Bill has no non-policing financial implications for local authorities.

Costs on Other Bodies, Individuals and Businesses

302. There will be no cost consequences for other bodies, individuals or businesses, because the costs of administration of the orders and, in the short-term, increased football policing, will be borne by police forces.

PUBLIC PROCESSIONS

General Costs on Police Forces

303. This part of the Bill should have no net costs on Police Forces. The requirement for organisers to give notice of intended marches 28 days in advance rather than 7 days, may mean that police forces are involved in slightly more planning meetings during the period leading up to some marches. However, this should be a marginal cost and is likely to be offset by the savings to the police which result from better planning and preparation for marches.

Costs on the Scottish Administration

304. This part of the Bill has no non-policing financial implications for the Scottish Administration.

Costs on Local Authorities

305. The Bill will make no fundamental difference to the responsibility of local authorities: to consider march applications; to decide if the march may go ahead; and to specify conditions if necessary. Local authorities already have these powers and duties.

306. However, the Bill will introduce a number of minimum requirements concerning the manner in which local authorities will carry out these duties. Specifically:

- By requiring organisers to give 28 days, rather than 7 days, notice of a march, the Bill will allow time for local authorities to fulfil their role more thoroughly;
- The Bill will require local authorities to assess the risks of allowing a march to proceed and the organiser’s compliance with any code of conduct previously issued by the Authority;
- The Bill will require local authorities to make details of planned marches available to the general public.
- The Bill will require local authorities to have regard to any guidance issued by the Scottish Ministers. Such guidance might include encouraging local authorities to hold planning meetings and post-event meetings with the police and organisers, in respect of sensitive marches; and encouraging them to inform and consult the local communities on proposed marches.
307. All of the functions newly specified in the Bill or likely to be set out in Scottish Executive guidance may be seen as elements of good practice in the fulfilling of a local authority’s basic regulatory function in respect of Marches and Parades. A number of local authorities will already be carrying out risk assessments and local consultations in order to be able properly to fulfil their duty of deciding whether a march should proceed. Likewise, local authorities already have some systems in place whereby the public can find out what marches are taking place. Furthermore, the Bill will retain flexibility for local authorities to streamline and simplify the planning arrangements in respect of non-controversial marches. Arguably, therefore, the Bill will impose no new requirements or functions on local authorities, beyond those which they should already be fulfilling.

308. However, at least for some of the marches, the expansion of the time available to local authorities to consult and plan is expressly intended to allow them to devote the necessary time and resources to the job. In this respect it is the Executive’s intention that more local authority resources should be deployed on this issue as a result of this Bill, and the Executive recognises that this will lead to increased costs. The financial impact will vary between different local authorities. For some, it is likely that the Bill will do no more than formalise the good practice which is already in place, with negligible additional costs. For other authorities, the increased planning time will make it possible for a modest increase in resources to achieve marked improvements in planning.

309. Table 7.6 of Sir John Orr’s Review of Marches and Parades in Scotland identified that only in 5 authorities were there a significant number of marches organised by the Orange Order or by Republican groups (who were grouped within the “Catholic” category in the report). Our assumption is that these local authorities will need to increase staffing for control of marches, as a direct result of this Bill, perhaps by 5 staff in total (2 for Glasgow, 1 each for North and South Lanarkshire, and a half-timer each for West Lothian and North Ayrshire). Assuming an average salary of £30,000 per annum for these posts, and a further £50,000 for administrative costs to support them, we estimate that the total cost to the local authority sector might be **£200,000 per annum**.

**Costs on Other Bodies, Individuals and Businesses**

310. The more thorough planning regime may mean that some march organisers face marginal additional requirements to comply with the planning requirements. On the other hand, businesses along march routes will benefit – also marginally – from having better advance notice of marches.

**AMENDMENTS TO THE LAW ON KNIFE CRIME**

**Costs on the Scottish Police service**

311. The increase in the minimum purchase age for non-domestic knives widens the coverage of that offence. The intention is to restrict the sale of such knives to this age group, who account for a substantial proportion of those convicted of the offence of carrying a knife in a public place. Any saving accruing from a consequent reduction in the numbers arrested for the offence of carrying a knife is likely to be similar to the additional costs to the police arising from the widening of this offence and hence we anticipate that this will be cost-neutral overall.
312. The changes to the police power of arrest will provide more flexibility for the police in deciding how they should carry out their operational responsibilities. However, the extent to which forces make use of these opportunities is an operational decision for chief constables. The new power would not, of itself, increase the number of times that the police prepare a report to the procurator fiscal concerning this offence and therefore has no direct resource consequences.

Costs on the Scottish Administration

313. The provision to increase the maximum possible sentence on indictment for carrying a knife would have cost implications for the Scottish Prison Service. The availability of a higher maximum is likely to result in a higher average sentence, and on the basis of current statistics on length of custodial sentences for such an offence there is expected to be a rise in the number of sentences longer than the existing maximum. Taking into account the number of such offences, the cost implication for the Scottish Prison Service is estimated at around £150,000 per annum.

314. It is not expected that there will be any change to the costs of prosecutions, courts or legal aid as a result of the increase in maximum sentence. Prosecutions will continue as before, and it is assumed that they will continue to be dealt with by solemn procedure in the sheriff courts.

Costs on Local Authorities

315. This part of the Bill has no financial implications for local authorities.

Costs on Other Bodies, Individuals and Businesses

316. Businesses which sell knives should already have established procedures in place to ensure that they comply with the current minimum purchase age of 16. The costs of applying these procedures to reflect a purchase age of 18 is expected to be minimal.

STOP, SEARCH AND SEIZE POWERS IN RELATION TO FIREWORKS OFFENCES

Introduction

317. In the six week period leading up to 5 November 2004, there were some 4,500 incidents notified to the police involving an alleged misuse of fireworks. However, in the great majority of cases there was no recourse to the procurator fiscal or the courts – because the officers dealt with the incident themselves, because they were unable to trace the alleged offender, or because they could not gather enough evidence to make a report to the procurator fiscal. In only a small proportion, perhaps 100 cases, did the police make a report to the procurator fiscal; and in many of these the alleged offence was vandalism rather than merely illegal possession of fireworks.

318. The number of incidents reported to the police is not expected to be affected by this legislation. However, the Bill will give the police additional powers with which they will be better able to gather evidence, particularly in lesser cases where the only offence is possession. This will not make a material difference to the amount of time police spend following up reported incidents, as they would in any case be attending the scene and speaking to witnesses, etc. But in perhaps 20 cases per year, this legislation may make it possible for the police to make a report to the procurator fiscal, typically of illegal possession. These cases will have cost
implications for the police, the Crown Office and Procurator Fiscal Service, the courts and legal aid. There is a significant margin of uncertainty around the estimate of 20 cases per annum, which could in the event reasonably be anywhere between 0 and 50, with corresponding implications for the associated cost estimates.

**General Costs on Police Forces**

319. The only additional cost to the police would be the costs of preparing a report to the procurator fiscal on each of the above 20 cases, and giving evidence in court if required to do so. On average it is estimated that this could take about 6 hours of police time per case, at a cost of £150 per case or **£3000 per annum** in total.

**Costs on the Scottish Administration**

320. Each case reported to the procurator fiscal would carry costs for the Crown Office and Procurator Fiscal Service (COPFS), the courts service and legal aid. Assuming all went through a sheriff summary hearing, on average the costs per case are estimated as £310 for COPFS, £224 for the courts service (judicial salaries plus administrative costs) and £687 for legal aid. The total costs for 20 cases would therefore be around **£24,000 per annum**.

**Costs on Local Authorities**

321. This part of the Bill has no non-policing financial implications for local authorities.

**Costs on Other Bodies, Individuals and Businesses**

322. This part of the Bill has no financial implications for other bodies, individuals or businesses.

**CONTROL OF SEX OFFENDERS**

**General Costs on Police Forces**

323. The monitoring of registered sex offenders is an established part of normal policing. The measures in this part of the Bill will make some adjustments to the powers available to the police to carry out this function, but do not change the overall task and so will have a marginal impact on costs.

324. It is not expected that the powers of entry and examination will be used very often, because compliance with requests for entry is expected to be high. Given the total of 3122 registered sex offenders in Scotland (as at 1 April 2006), it is estimated that the police might want to use the powers of entry and examination in up to 100 cases over the first few years following their introduction.

325. However, against the costs of this additional police activity can be offset a reduction in costs of ongoing monitoring by the police. The need to take other courses of action to inform the risk assessment process, when dealing with offenders who have long refused to co-operate,
These documents relate to the Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2 (SP Bill 46A)

will be lessened with the advent of the new powers. Intensive surveillance, for example, is a very expensive resource.

326. Furthermore, the new measures also provide that a sheriff will determine an application without hearing from the relevant offender or anyone with an interest in the premises. In the light of this, intimation of the application to the offender or any other person with an interest in the premises will not be necessary.

327. There are no cost implications for the police in extending the notification requirements to include passport details. Relevant sex offenders will have to provide further evidence of their identity to the police for the purposes of verification. It will also allow the police to confirm compliance with the existing requirements on offenders to notify the police if they intend to travel outside the United Kingdom, without the need to seek information from third parties.

328. The measures amending section 96 of the Sexual Offences Act 2003 clear up a perceived flaw in the existing legislation. Accordingly the regulations to be made under section 96 have a sharper focus. This will allow the police and other relevant persons to get more relevant information and photographs that will better enable them to identify offenders and know their exact whereabouts. For example, the regulations will provide that a responsible person has to advise the police of the address at which the offender is intending to reside following his release or transfer from prison or hospital. We do not see any cost implications to the police associated with this measure.

329. The new powers to take DNA from relevant offenders have been introduced to deal with offenders who have not had their DNA taken. The cost of a DNA kit and the subsequent process of taking and analysing samples are estimated at £46. Dip sampling in several forces has revealed a small number of registered sex offenders who are not recorded on the DNA Database. This can occur when the opportunity to obtain mouth swabs has not been exploited. It can also cover situations when forces deal with foreign sex offenders who take up residence in Scotland. However with the advent of the new measures one large force has begun a trawl of those offenders who have not had DNA taken and have obtained voluntary samples.

Costs on the Scottish Administration

330. This part of the Bill has no non-policing financial implications for the Scottish Administration.

Costs on Local Authorities

331. This part of the Bill has no non-policing financial implications for local authorities.

Costs on Other Bodies, Individuals and Businesses

332. This part of the Bill has no financial implications for other bodies, individuals or businesses.
DATE AND PLACE OF BIRTH

General Costs on Police Forces

333. Police officers already routinely ask those who they apprehend to give details of their date and place of birth, and in the vast majority of cases the information is provided as requested. All that this provision will do is to give police the power to enforce such requests on the rare occasions that they may need to. It is anticipated that, with this backing, cooperation with such requests will be virtually 100%. There will therefore be no additional costs from this provision, and there may conversely be a marginal saving of time and effort in obtaining the information from those who are initially reluctant.

Costs on the Scottish Administration

334. This part of the Bill has no non-policing financial implications for the Scottish Administration. It is not expected that there will be any prosecutions for failure to comply with the requirement to divulge date and place of birth.

Costs on Local Authorities

335. This part of the Bill has no non-policing financial implications for local authorities.

Costs on Other Bodies, Individuals and Businesses

336. This part of the Bill has no financial implications for other bodies, individuals or businesses.

TAKING FINGERPRINTS AT A PLACE OTHER THAN A POLICE STATION

General Costs on Police Forces

337. It is expected that, following this legislation, mobile fingerprint readers will become a standard part of the equipment carried by police patrols. This has the capacity to make a significant difference to the way that officers deal with those who commit minor offences. Currently, officers deal with such offenders either on the spot (perhaps issuing a verbal warning or a fixed penalty notice) or, if they wish to establish identity or conduct further investigations, by taking them back to the police station where fingerprints can be taken. Under this legislation, it will be possible for officers to verify the offender’s identity at the scene by checking whether his or her prints match those stored on existing databases. This will reduce the number of occasions when minor offenders have to be brought back to the station, saving a considerable amount of police time.

338. The capital cost of fingerprint readers would probably be met by the Scottish Administration (see below).

339. It is not possible to quantify the longer-term financial effects with any certainty. However, it has been assumed that average utilisation of patrol cars is about 50%, and that each
of 800 operational cars could have at least one occasion per week on which an unnecessary trip back to the station is avoided.

340. Each trip back to the station which is avoided represents a saving of perhaps 1 hour each for 2 police constables, with a notional cost of £50. On this basis the annual saving to police time would be equivalent to £2 million of time-releasing savings.

341. There may be occasions when officers are able to use these powers to identify an individual wanted for other offences who would not otherwise have been discovered. However the vast majority of those wanted for other offences are likely to be identified and apprehended in any case, and therefore any associated police and wider criminal justice costs are expected to be negligible. The new powers and equipment will simply assist the police in some cases to apprehend such individuals more quickly.

Costs on the Scottish Administration

342. The immediate cost would be the capital cost of the equipment. Chief constables will ultimately decide how many fingerprinting units they wish to procure for their force, however we estimate that approximately 1600 patrol cars will be fitted with a unit with up to another 400 procured for training, spares, etc. With the cost of an individual unit currently estimated to be around £2000, the total cost is expected to be approximately £4 million. This cost might be spread over 2006-07 and 2007-08.

Costs on Local Authorities

343. This part of the Bill has no non-policing financial implications for local authorities.

Costs on Other Bodies, Individuals and Businesses

344. This part of the Bill has no financial implications for other bodies, individuals or businesses. There would be a small saving of time for people apprehended in the street and who can be dealt with quickly by officers rather than taken back to the station. But the financial value of this benefit cannot be quantified.

MANDATORY DRUG TESTING AND ASSESSMENT

Preamble

345. Several of the responses to this part of the February 2005 consultation document, Supporting Police, Protecting Communities, commented on the considerable and unknown number of drug-related offenders who might enter treatment following a positive drugs test under these provisions. The Executive accepts that there is no reliable basis for estimating how many individuals might be referred for mandatory assessments under this scheme, nor how many of those would accept the treatment that is offered as a result. The intention is therefore to roll out these provisions in stages, beginning with a pilot exercise in priority areas, on a substantial though restricted scale. In this way, it will be possible to gain experience of how to use the system to bring maximum help to those with a drug dependency. The rate of roll-out will also be
controlled so that the numbers entering treatment will not exceed the capacity of the treatment services.

346. The Bill therefore provides that the provisions on mandatory drug testing and assessment can be rolled out where needed, gradually and over a period of time, by Order of the Scottish Ministers. The initial phase will be a two-year pilot starting in April 2007. During this phase, the intention is to restrict operation of the provisions to a limited number of police stations in order to achieve some 6000 tests per year which might, on the basis of experience in England and Wales and the Scottish arrest referral schemes, lead to 3300 assessments and 500 additional treatment places. Figures on the numbers of offenders charged with trigger offences suggest that a pilot based on 4 busy city police stations might result in up to 6000 tests per year (on an average of 1500 such tests in each).

347. The figures shown below and in the summary tables at the start of this memorandum relate to the costs of the initial pilot. The extent of future roll-out has yet to be determined but it is not envisaged that this would extend to the whole of Scotland. Rather, there will be a phased and targeted approach, principally on those areas identified as having high levels of drug prevalence and associated acquisitive crime. The pilots will help to establish the effectiveness of this approach and so inform the extent of wider coverage needed.

348. At this stage our best estimate, given that we will already be targeting areas of high prevalence in the pilot areas, is that phased roll-out could increase the additional costs by a factor of five compared to the costs for the initial phase shown in this memorandum. If so, this would bring the total policing costs to around £600,000 per annum and the Scottish Administration costs to around £8m per annum. However, Ministers intend that such an expansion would only take place after there was more reliable evidence available of both the costs and the benefits of the scheme.

**General Costs on Police Forces**

349. The direct cost to the police from Mandatory Drug Testing of Arrestees will relate to the police time taken up administering the test (and associated paper work etc). It is anticipated that this will take place at the same time as other routine procedures are carried out on arrival at police custody. The mandatory drug test will be an additional standard procedure for those charged with one of the trigger offences. For the purposes of the Financial Memorandum we have assumed that each test and associated paper work will take around twenty minutes and that the significant majority of tests will be carried out by police constables. The hourly cost of a police constable is £25.

350. At a cost of £25 per hour (for three tests), and assuming 6000 tests per year, this would give a total cost in terms of police time of £50,000 per annum.

351. For costing purposes it is assumed that a similar testing technology to that used in England and Wales is likely to be employed in the Scottish pilots. The consumable testing units cost around £12 each and so, for 6000 tests, the annual cost for tests would be about £72,000.
352. On the basis of the technology used in England and Wales, there would also be a one-off cost of around £2000 for each pilot site for the IT hardware and other equipment needed to support tests. It is likely that there would be also one-off costs for training in use of the testing equipment, provided by the test manufacturer. This cost is likely to be nominal (around £200-£300 per day, during which users could be trained in a group). Overall this would add around £9,000 one-off costs for the 4 police stations in the pilot.

**Costs on the Scottish Administration**

353. Both assessment and treatment costs will be directly funded by the Scottish Administration during the two year pilot phase.

**Assessment Costs**

354. These costs relate to the assessment for treatment carried out on each offender required to undergo treatment following a mandatory drug test. Assessment in this case is likely to mean a short meeting with an assessor and a discussion and series of questions relating to drug misuse and dependency. Similar assessments are carried out by Arrest Referral schemes. From the experience of the Arrest Referral pilots with the greatest throughput we have established an estimated unit cost for each such assessment of around £200.

355. From the experience of similar schemes in England and Wales we have established that around 55% of those tested, test positive and will require to undergo assessment. This suggests that from the 6000 tests carried out, approximately 3300 individuals may require assessment, suggesting a total cost of around £660,000 per year.

**Cost of Treatment**

356. The costs of treatment relate to those individuals referred onto treatment following assessment. This cost is the most difficult to establish for a number of reasons. Firstly, although assessment following a positive drug test is mandatory, engagement with treatment is not. Even those individuals referred onto treatment services may not attend or continue to attend for any length of time. Whilst extrapolation of the data from the largest of the schemes in England and Wales suggests that there may be up to 100 additional individuals engaging with treatment services as a result of the proposed pilots, the early experience of the Scottish arrest referral schemes suggests that a much higher number can be expected. We are therefore assuming that up to 500 additional treatment places might be needed.

357. The costs of treatment are difficult to accurately estimate, principally due to the wide range of treatment providers and treatment types available across the country. The treatment also differs for heroin and cocaine.

358. A survey of treatment provision currently available suggests a rough costing of £2,000 per year for substitute prescribing (heroin) treatment and £1,500 per year for psycho-stimulant (cocaine) treatment. However, given the current pattern of drug misuse in Scotland, it is proposed to assume a unit cost figure of £2,000 per individual, which suggests additional treatment cost of up to £1,000,000 per year.
Costs on Local Authorities

359. This part of the Bill has no immediate non-policing financial implications for local authorities.

360. No firm decisions have been taken at this stage as to which organisations/agencies will have primary responsibility for carrying out the assessments. It is anticipated that either local authorities through their addiction services or health boards will be in the lead but this will not preclude either from contracting where appropriate with the voluntary sector for service provision. In the event of local authorities assuming primary responsibility, full funding of the assessment costs set out in paragraph 280 will be provided through the ring fenced funding arrangements under section 27 of the Social Work (Scotland) Act 1968 for delivery of criminal justice social work services.

Costs on Other Bodies, Individuals and Businesses

361. This part of the Bill has no financial implications for other bodies, individuals or businesses. If the responsibility for providing assessments were transferred to health boards or any other provider, the funding estimated above would also be transferred.

INCENTIVES FOR PROVIDING EVIDENCE FOR USE AGAINST OTHERS

Background

362. There are three distinct measures in the Bill which provide incentives for criminals to co-operate with law enforcement agencies. These are an assistance agreement scheme offering the prospect of a reduced sentence; arrangements for immunity from prosecution in return for co-operation; and a sentence discount facility generally for past assistance. There is little evidence available to indicate how widespread the uptake of these new provisions would be. However, to calculate the financial consequences of these measures it has been necessary to make a number of assumptions. Principally it is assumed that each year 5 accused will negotiate and enter into a formal assistance agreement with the prosecution leading to the investigation and prosecution of 8 other alleged offenders; that 3 accused will be offered immunity from prosecution leading to the investigation and prosecution of 6 alleged offenders, and that 10 convicted offenders will seek a sentence discount from the courts for previous co-operation in criminal investigations and prosecutions.

Costs on the Scottish Police service

363. There will be additional costs to police forces as a result of these measures. Information and intelligence about other alleged criminals provided by co-operating offenders will require to be investigated by the police and the results reported to the procurator fiscal for the possible institution of criminal proceedings. The resources deployed by the police will vary according to the nature of the crime being investigated and it has been assumed that a team of 6 officers deployed for one week on each investigation would cost £4,600. The investigation of 14 alleged offenders, on the basis of information provided as a result of co-operation, would therefore cost about £65,000 per annum.
These documents relate to the Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2 (SP Bill 46A)

Costs on the Scottish Administration

364. There will be additional costs to the Scottish Administration arising from these proposals, in the procurator fiscal service, courts service, legal aid and prison service. However they will be offset by savings to each as described in paragraphs 290-293.

Savings

365. Where an offender enters into an agreement to co-operate with the prosecution, he is required to plead guilty. He may enter into such an agreement before or during the course of his or her trial. The same would apply where an offender is granted immunity from prosecution. Accordingly savings in trial costs will accrue to the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Court Service (SCS) and in legal aid. Such savings will vary depending on whether the offender would have been tried in the sheriff court under solemn procedure or in the High Court. In addition average costs have been used to take into account the different stages in the prosecution at which an assistance agreement might be entered into or when immunity might be granted. The average unit costs for sheriff solemn and High Court trials in 2003-04 are as follows.

<table>
<thead>
<tr>
<th>Agency</th>
<th>Sheriff solemn</th>
<th>High Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>COPFS</td>
<td>£6,332</td>
<td>£10,785</td>
</tr>
<tr>
<td>SCS</td>
<td>£1,709</td>
<td>£3,713</td>
</tr>
<tr>
<td>Legal aid (excluding appeal)</td>
<td>£2,211</td>
<td>£14,033</td>
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</table>

366. In relation to the assistance agreement scheme, it has been assumed that, of the 5 cooperating offenders, 3 would have been tried in the Sheriff Court and 2 in the High Court. It is further assumed that there would be savings from 2 appeals that would not otherwise proceed. The average costs for COPFS and SCS include an element for appeals: no such element is included in the legal aid costs. It is estimated that an additional saving of £1,000 for each appeal will accrue in legal aid costs. As a result, the total savings in trial costs from the assistance agreement scheme will amount to £40,500 for COPFS, £12,500 for SCS and £36,500 in legal aid.

367. In relation to immunity from prosecution, it has been assumed that of the 3 offenders granted immunity, 2 would have been tried in the sheriff court and 1 in the High Court. It is further assumed that the there would also be savings from 1 appeal not otherwise proceeded with. Savings in trial costs from immunity from prosecution will amount to £23,500 for COPFS, £7,000 for SCS and £19,500 for legal aid.

368. Savings will also accrue to the Scottish Prison Service (SPS). The average annual cost per prisoner place in 2003-04 amounted to £33,244. In calculating the savings in prison costs from all three measures, the following assumptions have been made. It is assumed that of the 5 offenders who would enter into an assistance agreement, 3 would have received the average sheriff solemn custodial sentence of 14 months and 2 would have received the average High Court sentence of 4 years 8 months. As a consequence of their co-operation it is assumed that each sentence will be discounted by one third. It is also assumed that of the 3 offenders who would be granted immunity from prosecution, 2 would have received the average sheriff solemn custodial sentence of 14 months and 1 would have received the average High Court sentence of 4
years 8 months. As a consequence of the grant of immunity from prosecution the full costs of these sentences will not be incurred. In addition it is assumed further that 10 offenders will have a reduction of one fifth of their sentence where under the third measure the courts have taken previous assistance into account. These savings would build up over a few years after the implementation of the new arrangements. Allowing for the fact that time served is normally less than the full sentence, in the long run the recurrent annual savings are estimated to amount to £120,500 for the assistance agreement scheme, £141,500 for immunity from prosecution and £149,500 for the previous assistance arrangements giving a total prison service saving of £411,500 per annum.

Additional costs

369. On the other hand, additional costs will arise from the negotiation of assistance agreements with 5 co-operating offenders and the terms of the grant of immunity from prosecution in 3 cases; the trial of 14 alleged offenders as a result of the information and intelligence provide by these sources; and from custodial sentences imposed by the courts.

370. It is estimated that the negotiation of each assistance agreement and of the terms of each grant of immunity would cost £500 making an additional cost to COPFS of £4,000.

371. It is assumed that a total of 14 alleged offenders will be tried as a result of co-operation provided by associates under the assistance agreement scheme or following the grant of immunity from prosecution. Accordingly, additional trial costs will be incurred by COPFS, SCS, and in legal aid. It is assumed that 10 alleged offenders will be tried in the sheriff court under solemn procedure and 4 in the High Court. The average trial costs for sheriff solemn and High Court trials detailed in paragraph 295 above would apply. It is estimated that the additional expenditure in trial costs will amount to £106,500 for COPFS, £32,000 for SCS and £86,500 in legal aid. The legal aid figure includes provision for 8 appeals at a cost of £1,000 in each case.

372. Additional expenditure will also be incurred by SPS. It is assumed that 12 of the 14 prosecutions arising from information provided by co-operating offenders will result in convictions and custodial sentences. It is assumed that 9 offenders will receive the average sheriff solemn custodial sentence of 14 months and 3 would receive the average High Court custodial sentence of 4 years 8 months. With the average annual cost per prisoner place in 2003-04 amounting to £33,244, and allowing for the normal length of time served for such sentences, the additional annual expenditure in prison costs is estimated to amount to £482,000. As with the savings, this cost would build up over a few years after the implementation of the new arrangements.

373. Summaries of the total estimated savings and gross additional costs to the Scottish Administration are as follows:
These documents relate to the Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2 (SP Bill 46A)

<table>
<thead>
<tr>
<th>Agency</th>
<th>Assistance agreement</th>
<th>Immunity</th>
<th>Sentence discount for past assistance</th>
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<tr>
<td>COPFS</td>
<td>£40,500</td>
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<tr>
<td>SCS</td>
<td>£12,500</td>
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<tr>
<td>Legal aid</td>
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Summary of Savings

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<th>Immunity</th>
<th>Sentence discount for past assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPS</td>
<td>£120,500</td>
<td>£141,500</td>
<td>£149,500</td>
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<tr>
<td>Totals</td>
<td>£210,000</td>
<td>£191,500</td>
<td>£149,500</td>
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Summary of additional costs

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<th>Sentence discount for past assistance</th>
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<td>SCS</td>
<td>£17,500</td>
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</tr>
<tr>
<td>Legal aid</td>
<td>£45,000</td>
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<td>-</td>
</tr>
<tr>
<td>SPS</td>
<td>£199,500</td>
<td>£282,500</td>
<td>-</td>
</tr>
<tr>
<td>Totals</td>
<td>£324,000</td>
<td>£386,500</td>
<td>-</td>
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</tbody>
</table>

374. The total gross estimated additional expenditure by the Scottish Administration for the procurator fiscal service, courts service, legal aid and prison service will thus amount to £710,500, and the savings to £551,000. The net additional expenditure will therefore amount to £159,500, or around £160,000 per annum.

375. In addition, the Scottish Administration will need to meet the additional costs of witness protection, which will be provided through the Scottish Crime and Drug Enforcement Agency. Co-operating offenders may, for their own safety, require witness protection. It is anticipated that these measures may increase the long-term cost of witness protection around 25%, which would add £200,000 per annum to this cost. The need for witness protection for co-operating offenders was identified as an issue by the Association of Scottish Police Superintendents. It suggested that where such offenders are released from prison protection may be necessary for several following years with potentially not insignificant costs falling on police budgets. These costs will however fall to the Scottish Administration rather than police forces individually.

Costs on Local Authorities

376. This part of the Bill has no non-policing financial implications for local authorities.

Costs on Other Bodies, Individuals and Businesses

377. This part of the Bill has no financial implications for other bodies, individuals or businesses.
These documents relate to the Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2 (SP Bill 46A)

REGULATING ORDER FISHERIES – ENFORCEMENT

General Costs on Police Forces

378. There will be no new costs on police forces from this part of the Bill.

Costs on the Scottish Administration

379. The Bill allows for enforcement of each Regulating Order (RO) fishery to be undertaken by the grantee, the Scottish Fisheries Protection Agency (SFPA), or a combination of the two.

380. The funding available to the SFPA will increase by £3.8m in 2006/07 and £4.3m from 2007/08. This increased funding is provided to meet the cost of additional Regulating Order and other inshore regulation enforcement burdens. However, it will be a matter for the SFPA in discussion with key stakeholders to decide how to divide this funding between enforcement of Regulating Orders and its other inshore responsibilities.

381. There are currently only two Regulating Orders in place while one other proposed Order is at the inquiry stage. It is possible that the cost to the SFPA of enforcing Regulating Orders could rise in the longer term if further Regulating Orders are made. Given, however, that it takes around two years to make a Regulating Order, it is clear that the costs of enforcing Regulating Orders can be met from within the SFPA’s inshore allocation for inshore activities within the current spending cycle.

Costs on Local Authorities

382. This part of the Bill has no financial implications for local authorities.

Costs on other Bodies, Individuals and Businesses

383. There will be costs for RO grantees who take on an enforcement role. These costs would be met from the income that a RO grantee receives from the management of the RO although it is possible that other bodies (such as local enterprise companies) may opt to contribute to specific costs. It is estimated that up to two RO grantees might take on some level of enforcement by 2009 and that this activity could cost each RO grantee approximately £150k per annum, depending on the size of the RO fishery and the level of the enforcement activity undertaken. The total costs on RO grantees are therefore estimated as £150,000 in 2007-08 and a recurrent £300,000 per annum from 2008-09.

384. As with the costs on the SFPA, it is possible that these costs could rise in the longer term if further Regulating Orders are made.
These documents relate to the Police, Public Order and Criminal Justice (Scotland) Bill as amended at Stage 2 (SP Bill 46A)

POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES AND REVISED FINANCIAL MEMORANDUM


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