INTRODUCTION

1. This document relates to the Criminal Procedure (Legal Assistance, Detention and Appeals (Scotland) Bill introduced in the Scottish Parliament on 26 October 2010. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 60–EN.

POLICY OBJECTIVES OF THE BILL

2. The ruling of the UK Supreme Court in the case of Cadder v. Her Majesty’s Advocate on 26 October 2010 has significant implications for the investigation and prosecution of crime in Scotland. This Bill forms a part of the Scottish Government’s response to the decision. It is designed to ensure that Scottish practice accords with the standards of the European Convention on Human Rights (ECHR) and to ensure the effective functioning of the criminal justice system following the judgement. The Bill should be considered alongside terms of reference for the Expert Review led by Lord Carloway established by the Government to investigate long term options for reform. The Review was announced on 26 October 2010 with the terms of reference to be published on the Government’s website.

3. The Bill has four main aims:

- It will enshrine a right to legal advice for suspects being questioned by the police.
- It will extend the existing 6 hour period for police detention.
- It will provide a mechanism that could be used if necessary to ensure that adequate legal aid arrangements are available for detained suspects.
- Finally, it will make some provision to reinforce the principles of certainty and finality set out in the Supreme Court decision.

2 http://www.scotland.gov.uk/Topics/Justice/legal
BACKGROUND

The European Convention on Human Rights

4. Article 6 of the ECHR provides for the Right to a Fair Trial. The relevant provisions read:

“Article 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

3. Everyone charged with a criminal offence has the following minimum rights:

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

5. Under section 6(1) of the Human Rights Act 1998\(^3\), it is unlawful for a public authority to act in a way which is incompatible with a Convention right. “Convention rights” are those rights and fundamental freedoms drawn from provisions of the ECHR which are set out in section 1 of the Human Rights Act. If a person claims that a public authority has acted, or proposes to act, in a way which is made unlawful by section 6(1), they may bring proceedings against the public authority under the Human Rights Act in the appropriate court or tribunal (section 7(1)(a)) or rely on the Convention right concerned in any legal proceedings. They are only permitted to do so if they are, or would be, a victim of the unlawful act. A “public authority” includes the members of the Scottish Executive collectively and individually.

6. Similarly, section 57(2) of the Scotland Act 1998\(^4\) provides that a member of the Scottish Executive has no power to act in a manner that is incompatible with Convention rights. This means that Convention rights proceedings can be brought against them under the Human Rights Act or under the Scotland Act.

Scottish law on detention

7. In Scotland, a person suspected of a crime may be detained and questioned by the police for a period of 6 hours prior to arrest. The introduction of this detention period was recommended

\(^3\) (c.42)
\(^4\) (c.46)
This document relates to the Criminal Procedure (Legal Assistance, Detention and Appeals (Scotland) Bill (SP Bill 60) as introduced in the Scottish Parliament on 26 October 2010

by the Thomson Committee in its 1975 Report “Criminal Procedure in Scotland”. This fundamental review of all aspects of Scottish criminal procedure led to legislation in 1980. The provisions on detention were subsequently re-enacted in section 14 of the Criminal Procedure (Scotland) Act 1995 (the “1995 Act”). During detention, a suspect can have a solicitor and one other person informed and should be cautioned prior to any police interview. The caution informs them that he or she is not obliged to say anything (other than to confirm their name, address etc.), but that anything said will be recorded and may be used in evidence.

8. The purpose of detention is to facilitate the carrying out of investigations into the offence that the person is suspected of having committed and consideration of whether criminal proceedings should be brought against the person. Detention must end within 6 hours or if the person is (a) arrested; (b) detained in pursuance of another enactment; or (c) where there are no longer grounds for detention. If there are no longer grounds for detention and the person is released he or she cannot be re-detained on the same grounds or any other grounds arising from the same circumstances.

9. In summer 2010, Scottish practice was altered so that all suspects should be offered a consultation with a solicitor (in practice often by telephone), with the option of solicitor attendance during interview (when this could practicably be arranged and would not prejudice an ongoing investigation).

ECHR compatibility of Scottish law on detention

10. On 27 November 2008 the European Court of Human Rights (ECtHR) Grand Chamber made a ruling in the case of Salduz v. Turkey. In that case, the Court unanimously held that there had been a violation of Article 6(3)(c) (right to legal assistance) of the ECHR in conjunction with Article 6(1) (right to a fair trial) on leading evidence of a confession made in police custody. The violation arose because the applicant was not able to access legal advice prior to police questioning and the start of the prosecution in court. The ECtHR (at para 55) observed that:

“as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6”.

11. ECtHR rulings in relation to one jurisdiction do not necessarily have direct application in other countries that have signed up to the ECHR. Each national system is different and the

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5 Criminal Procedure in Scotland (Second Report), Cmnd. 6218, para. 3.24.
6 Criminal Justice (Scotland) Act 1980 (c.62)
7 (c.46)
8 Lord Advocate Guidelines - Interim Guidelines on Access to Solicitors. The guidance was issued in relation to solemn cases on 15 June and extended to all cases on 7 July: http://www.copfs.gov.uk/Publications/2010/06/LAGuidelines
9 The text of ECtHR decisions can be accessed at: http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en

3
checks and balances in place in each country can vary greatly. Nonetheless, ECtHR decisions are highly influential in influencing domestic law.

12. In Scotland, the law on detention was considered by the High Court of Justiciary (the most senior criminal court in Scotland) in 2000\textsuperscript{10} and 2001\textsuperscript{11} and ruled to be entirely compliant with ECHR. Following the decision in \textit{Salduz}, the law was considered further by a bench of 7 judges of the High Court of the Justiciary in the case of \textit{Maclean v. HMA}, decided on 22 October 2009. In that case, the High Court unanimously decided that Scottish practice was ECHR compliant. In particular, the court found that that the guarantees and protections otherwise available to suspected and accused persons under the Scottish criminal justice system (in particular, the requirement for the essential facts of every criminal case to corroborated by evidence from two separate sources) were sufficient to secure a fair trial even where the suspect was interviewed while detained without access to a lawyer\textsuperscript{12}. The High Court also observed that “\textit{while the judgment in Salduz commands great respect, we are not obliged to apply it directly in Scotland}”\textsuperscript{13}.

13. In assessing Scottish law, the High Court opined that the \textit{Thomson} Committee recommendations on detention “\textit{have been in place for nearly thirty years without serious concern in Scotland that the interests of suspected persons are being prejudiced. It is clear that Parliament did not intend that a detained person should have, in general, the right to have legal representation or advice during detention}.”\textsuperscript{14}

14. In 2010, Scottish law on detention was considered by the UK Supreme Court in the case of \textit{Cadder v. HMA}. The Supreme Court ruled that the law was incompatible with the ECHR as interpreted in the context of the decision in \textit{Salduz}. The decision in \textit{Cadder} means that amendment is required to the existing police powers to detain and question suspects. This Bill therefore creates a right of access to a solicitor before questioning by the police, in order to ensure that Scottish practice conforms to the standards of the ECHR. It also makes a number of other changes considered necessary to ensure effective future operation of the criminal justice system.

**POLICY OBJECTIVES OF THE BILL**

\textbf{Enshrining a right of suspects to have access to a solicitor}

15. It is fully accepted by the Scottish Government that the law on access to a solicitor during police questioning has changed. This Bill outlines the Government’s immediate response, enshrining a clear right to legal advice for suspects before and during detention by the police and taking important steps to make it work in practice.

16. Although the revisions to Scottish practice adopted in the summer of 2010 have, in effect, resulted in access to a solicitor being made available to accused persons, it is thought necessary

\begin{itemize}
\item \textsuperscript{10} \textit{Paton v. Ritchie}, 2000 SCCR 151
\item \textsuperscript{11} \textit{Dickson v HM Advocate}, 2001 SCCR 397
\item \textsuperscript{12} See paragraph 26 of the judgement: \url{http://www.scotcourts.gov.uk/opinions/2009HCJAC97.html}
\item \textsuperscript{13} Ibid, paragraph 29
\item \textsuperscript{14} Ibid, paragraph 7
\end{itemize}
that access should be set out as a specific statutory right. This will ensure certainty in the law and, of course, provide a specific and identifiable protection for suspected persons. A legislative right of access ensures a more rigorous safeguard than practice based upon guidelines. Allowing suspects the opportunity to confer with a legal adviser prior to and during questioning will ensure that any statements are made on an informed basis.

17. There is a limitation on the right of access where it is thought that a delay in permitting contact is considered necessary in the interests of the ongoing investigation or to ensure the prevention of crime or to ensure that offenders do not escape justice. Extension of the time limit will afford police more time in which to reduce any discerned risk to the investigation ahead of questioning.

Extension of period of detention under section 14 of the 1995 Act

18. The 6 hour maximum detention period was established in 1980 as a result of the recommendations of the Thomson Committee. The period was chosen to provide the shortest practicable time limit for suspects to be detained for questioning. There was no intention at that time for legal advice to be made available during the 6 hour period and the Thomson Committee made clear that:

“As soon as the purpose of the detention is served, the police will have a clear duty. They must either liberate the detainee or arrest him.”15

19. With the introduction of a system based on solicitor access during detention, six hours is not considered by the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Police Services Authority (SPSA) or the Association of Chief Police Officers in Scotland (ACPOS) to be an adequate maximum period. In too many cases it could be insufficient to allow suspects to obtain legal assistance and for the police to conduct an effective investigation. There had previously been some suggestion that the period needed to be amended to reflect developments in practice since 1980, for example in relation to the conducting of interviews in sexual cases and to cover situations where the suspect was unable to be questioned (e.g. where they were inebriated)16.

20. In deciding that the 6 hour maximum must be extended, the Government has consulted closely with ACPOS, SPSA, COPFS and the Law Society of Scotland. The first 3 of those organisations considered that an extension in some form was required, but the Law Society considered that any extension should not feature in this Bill. Instead, the Society argued that options for change should be considered by the judicially-led Expert Review established to consider long term reform of the criminal justice system. The Government agrees that the Expert Review should consider the operation of the detention period and make recommendations for reform. Any such recommendations would be considered carefully at the appropriate time. However, it is highly unlikely that any reforms resulting from the Review could become law before late 2011 or more likely 2012. Waiting until this time to make a change does not appear

15 Criminal Procedure in Scotland (Second Report), Cmnd. 6218, para. 3.25.
to be a viable option when there is already evidence that the six hour period is too short for some cases that have arisen under the new access arrangements established in summer 2010 (specific examples provided by ACPOS has included serious cases involving multiple accused, who have each requested the same solicitor; and also situations where one or more suspect is a juvenile, requiring the police to contact and secure the attendance of responsible adults for each suspect). It seems evident that a period designed as a maximum time in which to permit police questioning will come under unacceptable strain when legal advice has to be obtained and provided within the same period in every single case. In some circumstances, for example a detention period commencing at 3am in a rural area, it is almost certain that arranging access and conducting an interview within 6 hours would prove impossible.

21. The Bill will extend the maximum period for detention from 6 to 12 hours in all cases. However, ACPOS has indicated to the Government strong concerns that police forces would not be able to carry out the necessary investigations in this timescale in some serious and complex cases. Therefore, the Bill also permits a further extension of 12 hours (up to a maximum of 24 hours detention in total) in specific cases where a senior police officer affirms that an extension is required because of specific circumstances in a case. An extension may only be granted by a senior police officer of the rank of at least Inspector and who has not been involved in the investigation. An extension will only be granted if the continued detention is considered necessary to secure, obtain or preserve evidence, if the offence for which the person is being detained is an indictable offence and if the investigation is being conducted diligently and expeditiously. These time periods are supported by each of ACPOS, COPFS and the SPSA.

22. The changes contained within the Bill are considered to provide an appropriate maximum amount of time to permit police questioning of suspects and the provision of legal advice. It is relevant to observe that in England and Wales a person may be detained for 24 hours and this can be extended up to 36 hours by a police superintendent or to 96 hours by a magistrate. Although there are many differences between criminal procedure in Scotland compared to England and Wales, the detention periods there were designed for a system based on solicitor access during detention.

23. It should be noted that due to the current nature of the six hour detention period in Scotland there is limited empirical statistical evidence in support of any specific time period for detention. As a result, the provisions in the Bill are based upon operational experience and professional judgement. The practical experience of police forces and defence agents in operating within these new limits will be monitored and will provide an evidence base for the Expert Review to consider should it wish to assess the arrangements for police detention. One consequence of an extension to the time period will be to make it more practicable for suspects to receive advice from a solicitor of their choosing, rather than being compelled to reply upon an “on call” solicitor due to the need to meet the 6 hour time period.

24. Longer detention periods are likely to place pressures on police accommodation for holding suspects. Some police stations (both urban and rural) lack sufficient interviewing and custody facilities and suspects will in some cases be transported to stations with more appropriate accommodation (this is incidentally another argument in favour of an extension to the 6 hour period). The Government and ACPOS are considering the best way in which to adapt and

17 Police and Criminal Evidence Act 1984 (c. 60), sections 41-44
allocate police facilities in response to the increase in the maximum period of detention outlined in the Bill. These issues are also covered in the Financial Memorandum.

25. It must be emphasised that the time limits in question will still be maximum periods. Where the interviewing of suspects is concluded in a shorter period than 12 (or 24) hours, the suspect should be either released or arrested. It is anticipated the vast majority of cases will be dealt with in less than 12 hours. Extension to 24 hours will be exceptional, but is considered appropriate given the great variety in the nature of individual cases: in terms of complexity, number of people detained at any one time, number and nature of offences suspected and nature of enquiries or processes required during a detention period. The Government considers that it is unreasonable to expect one timescale to fit all cases. Not only would this potentially frustrate proportionate efforts to conduct full enquiries into the most serious and complex offences, but it also applies a “one size fits all” solution to cases that are less serious or complex. Most crucially, it provides additional options for the approach to police investigation, with scope for forensic testing to take place during the detention period and the results put to suspects during questioning. This has become common practice in some types of investigation in England and Wales, notably where suspects make no comment at the initial stage of an investigation. It is considered an essential balance to the right of access, in order to maintain the effectiveness of police investigations in the period until the longer term Expert Review is able to take a broader view of the system. A simple extension of the maximum detention period to 12 hours would not achieve this.

Criminal legal assistance: eligibility for legal assistance for accused persons in custody

26. Advice and Assistance is the form of State funded legal assistance available in relation to police station interviews. It is only available to clients who are financially eligible to receive it in terms of section 8 of the Legal Aid (Scotland) Act 1986\(^\text{18}\) (“the 1986 Act”).

27. The Bill, as introduced, will insert a new section 15A into the 1995 Act enshrining suspects’ rights of access to a solicitor in certain circumstances.

28. Section 2 of the Bill will amend the 1986 Act to confer on the Scottish Ministers an order making power to make advice and assistance available to any person to whom section 15A of the 1995 Act (as inserted by section 1 of the Bill) applies, in such circumstances as they may prescribe, without reference to the financial limits under section 8 of that Act.

29. The policy objective is to ensure that the financial eligibility requirements for advice and assistance do not come to act as an impediment to the ready availability of solicitors, which will be necessary to facilitate the new right of access to legal advice for suspects.

30. The financial eligibility requirements may come to present a practical impediment to the availability of solicitors in two ways. First, the Law Society of Scotland has argued that there is some evidence that some of its members have been struggling to verify clients’ financial eligibility before police interviews since the change in practice adopted earlier this year. The problem is a practical one, since most people arrested by the police do not have in their

\(^{18}\) (c.47)
possession at the point of arrest documents which allow a solicitor to be reasonably satisfied that they are eligible to receive advice and assistance. The concern for a solicitor in private practice asked to advise a client before or during a police interview is that he or she may not be paid for the advice provided should it transpire that the client is ineligible to receive advice and assistance.

31. Second, the financial eligibility requirements present a problem for publicly employed solicitors. In terms of section 28A of the 1986 Act, solicitors from the Public Defence Solicitors’ Office (“PDSO”) can only provide “advice and assistance” as defined by the 1986 Act. They cannot, as a result, assist those who are financially ineligible for advice and assistance. So if changes are not made to the operation of the financial eligibility requirements in certain circumstances then some solicitors in private practice may decide that they are unwilling to carry out this work; and, in addition, those from the PDSO will not be able to advise those who are financially ineligible to receive advice and assistance.

32. To overcome these obstacles the Government believes it likely that it will need to disapply the financial eligibility criteria in certain circumstances. Until the terms of the judgement have been fully considered it is difficult to ascertain exactly what those circumstances might be. Allowing a degree of flexibility in defining the circumstances in which advice and assistance is to be made available without reference to the financial limits, will enable the Government to consult closely with the Scottish Legal Aid Board, the Law Society of Scotland and other justice sector partners to ensure that any scheme devised can be made to work, in order to give practical effect to the right of access to legal advice. This is the reason for the provision being in the form of a regulation-making power.

Time limits for late appeals

33. The Supreme Court’s decision in Cadder has been framed to protect finality and certainty in most completed cases. It also limits the possibility of appeals on the grounds that the suspect was detained and questioned without having had access to legal advice. The decision indicated that:

“convictions that have become final because they were not appealed timeously, and appeals that have been finally disposed of by the High Court of Justiciary, must be treated as incapable of being brought under review on the ground that there was a miscarriage of justice because the accused did not have access to a solicitor while he was detained prior to the police interview. The Scottish Criminal Cases Review Commission must make up its own mind, if it is asked to do so, as to whether it would be in the public interest for those cases to be referred to the High Court. It will be for the appeal court to decide what course it ought to take if a reference were to be made to it on those grounds by the Commission.”

19 Cadder v. HMA, Lord Hope at para. 62.
34. The Government’s view is therefore that as a general principle, concluded criminal cases should not be re-examined solely because the law has subsequently changed. This assessment is in line with similar positions that have arisen in case law in England and Wales.²⁰

35. However, this does not affect the ongoing cases (estimated to be around 3,500 in number) where an appeal has already been made or the relevant point taken during the course of the trial. Appeals in these cases will be considered on their merits by the courts.

36. For cases which have not been finally concluded, the 1995 Act makes provision for time limits in which appeals against conviction must be made. For example, in solemn cases appellants must note an intention to appeal against conviction within 2 weeks of the decision and specify grounds of appeal within a further 8 weeks. However, courts have discretion to waive these time limits in certain circumstances. There is currently no test in the 1995 Act for the allowing of such “out of time” appeals and there is no developed jurisprudence of the court which makes apparent when such extensions will be granted or refused.

37. The Bill makes provision in relation to statutory appeal rights under the 1995 Act so that late appeals will require the appellant to give reasons why they failed to comply with the time limits and the proposed grounds of appeal. The application must be intimated by the applicant to the Crown Agent, and the prosecutor may within 7 days of receiving intimation of the application request a hearing and be given an opportunity to be heard upon the application (or to make representations in writing). This provision is made for both solemn and summary cases.

38. As well as these modifications to the procedures for statutory appeals, the Bill (in section 6) introduces time limits for the taking for appeals by bills of advocation and bills of suspension. It provides a 3 week period for such appeals, and that period may be extended by the High Court on application by either party, explaining why the applicant failed to comply with the time limit and setting out the proposed grounds of appeal or review. This limit is required because such appeal by bills of suspension and bills of advocation are not currently subject to time limits, which could have potentially allowed some settled historical convictions to be appealed.

References by the Scottish Criminal Cases Review Commission

39. Applications may in future be made to the Scottish Criminal Cases Review Commission (SCCRC) on the basis that legal access was denied to a suspect during detention. These applications could potentially be made in relation to historical convictions where there is no other appeal route available.

40. The SCCRC has a vital role in considering possible miscarriages of justice, but the Government does not think that an application to the SCCRC should be used as a means to undermine the need for finality and certainty that the Supreme Court has expressed. The Bill therefore provides that the SCCRC must have regard to finality and certainty in making referrals to the High Court. It also provides that the Court may reject a reference from the SCCRC if it considers that it would not be in the interests of justice for any appeal arising from the reference

²⁰ In particular, the case of Cotterell, 2007 1 WLR 3262
²¹ Sections 109-111 in relation to appeals in solemn cases; sections 176 and 179 for summary cases.
to proceed. Finality and certainty in criminal proceedings is also identified as a specific factor for the High Court to consider in making this assessment.

ALTERNATIVE APPROACHES

41. There is no alternative approach to primary legislation that would achieve the Bill’s policy objectives.

42. In relation to a right of access, practice has been changed in order to afford suspects with legal advice on request. While this has been a necessary step in the interim, the Cadder decision means that a specific change to the law is required.

43. The remaining measures in the Bill are not required in order to ensure that Scottish criminal procedure is ECHR compatible. However, they are considered by the Government, COPFS, ACPOS and SLAB to be essential in order to ensure that the justice system can meet the newly established ECHR requirements and continue to operate satisfactorily. The fundamental concern is to ensure that the thorough, fair and proportionate investigation and prosecution of crime are not imperilled. The measures in this Bill are designed to maintain an appropriate balance between the rights of suspects and the need for the rights of victims to be upheld through an effective system of investigating and prosecuting crime.

44. In relation to extending the detention period, it would be possible to retain the 6 hour period as set out in the 1995 Act. However, this is not considered to be a satisfactory option. For many serious offences it would prove impossible to arrange contact with and attendance by legal advisers and then also conduct questioning of suspects without exceeding the time periods. There is also the option of a simple extension of the detention period to 12 hours. While this would provide much greater scope for solicitor access to be arranged and interviews conducted, it would not allow for forensic analysis to be completed during the period of detention. The ability to undertake such analysis will become more important in an environment where there is a right of access to a solicitor as this is likely to lead to fewer admissions in the early stages of investigations.

45. Similarly, not making provision in the Bill to permit change to legal aid arrangements is not considered a satisfactory option. It would run the risk of suspects not receiving advice, either because a publicly employed solicitor is unable to provide advice because the person is not financially eligible, or where a privately employed solicitor who is unsure of eligibility refuses to provide advice, because they may not be paid. It may also disadvantage private solicitors who do provide advice, in circumstances where they may not receive payment.

46. The provisions made in relation to appeals are considered to be necessary in order to reinforce the need for finality and certainty expressed by the Supreme Court.

47. The provisions are all considered to be appropriate for emergency legislation given the immediate need to reform law and practice following the decision in Cadder.
CONSULTATION

48. This Bill is an emergency response to a judicial decision and as a result it has not been possible to conduct the usual Government processes for consultation ahead of legislation. The Government has however been in close contact over summer 2010 with the Law Society of Scotland, COPFS, ACPOS, SPSA, Scottish Legal Aid Board, SCCRC, the Scottish Prison Service, the Scottish Court Service and the Ministry of Justice. Informal soundings have also been taken from Justice spokespersons from the other parties represented in the Scottish Parliament. Weekly meetings with key stakeholders have been held to discuss the experience of the changes to existing practice introduced in summer 2010 and also the possible options for changing the law. Consultation with each of these bodies has informed the content of this Bill. These discussions have also influenced the terms of reference for the Expert Review. This Review will take evidence over the period 2010-11 and provide a detailed report based upon input received.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal Opportunities

49. The Bill is focused upon criminal investigations and proceedings and has the potential to apply to anyone detained and questioned in relation to a criminal offence. The Bill’s provisions do not discriminate on the basis of gender, race, marital status, religion, disability, age or sexual orientation.

Island communities

50. The Bill has no differential impact upon island communities, although in some cases the extension to the detention period may allow greater facility for suspects to be transferred to appropriate facilities for interview. It will also make it easier for the suspect to receive a solicitor of his or her choice if the solicitor is not present on the island at the start of detention. The provisions of the Bill apply equally to all communities in Scotland.

Local government

51. The majority of police costs fall within the scope of the local government finance settlement and the effect on these is detailed in the Financial Memorandum for this Bill. The Scottish Government is satisfied that the Bill has no wider impact on local authorities.

Sustainable development

52. The Bill will have no negative impact on sustainable development.

Human rights

53. The Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights. The establishment of a right of access is designed specifically to ensure compliance with the ECHR. No compliance questions are considered to
arise in relation to the extension to the detention period (which even at its higher limit remains shorter than that for many other EU jurisdictions). The changes that may be made to ensure legal aid provision will be designed to ensure the right of access to a solicitor can be given effect in a consistent and reliable manner. The provisions in the Bill in relation to appeals are also considered to be within the Parliament’s legislative competence.
CRIMINAL PROCEDURE (LEGAL ASSISTANCE, DETENTION AND APPEALS (SCOTLAND) BILL

POLICY MEMORANDUM


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