CRIMINAL JUSTICE (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Criminal Justice (Scotland) Bill introduced in the Scottish Parliament on 20 June 2013:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 35–PM.
INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government 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. Any examples provided are purely illustrative and do not imply that provisions do not apply in other circumstances.

2. 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.

OVERVIEW OF THE BILL

3. The Bill seeks to support the aims set out in the Policy Memorandum by introducing reforms to modernise and enhance the efficiency of the Scottish criminal justice system. The provisions in the Bill take forward a range of the Scottish Government’s key justice priorities. Some of these provisions have been developed from the recommendations of two independent reviews: Lord Carloway’s review of criminal law and practice and Sheriff Principal Bowen’s review of sheriff and jury procedure. The Scottish Government sought views on Lord Carloway’s and Sheriff Principal Bowen’s recommendations in two separate consultations. A further consultation was also carried out on whether additional safeguards may be required if the requirement for corroboration is removed. Further information on these consultations can be found in the Policy Memorandum.

4. The Bill is in seven Parts.

5. Part 1 (Arrest and custody) includes provisions on the powers of the police to arrest, hold in custody and question a person who is suspected of committing an offence. This part also provides for the rights of such persons in custody and makes specific provision for vulnerable adults and children.

6. Part 2 (Corroboration and statements) provides for the abolition of the corroboration rule in criminal proceedings as well as the admissibility of mixed and exculpatory statements.

7. Part 3 (Solemn procedure) makes a number of amendments to the solemn procedure set out in the Criminal Procedure (Scotland) Act 1995 (‘the 1995 Act”). These include imposing a duty on parties in criminal proceedings to communicate, increasing the length of time for which an accused person can be remanded before having to be brought to trial from 110 to 140 days, and increasing the jury majority required for a guilty verdict.

http://www.scotland.gov.uk/About/Review/CarlowayReview
http://www.scotland.gov.uk/Publications/2010/06/10093251/0
http://www.scotland.gov.uk/Publications/2012/07/4794
http://www.scotland.gov.uk/Publications/2012/12/8141/0
http://www.scotland.gov.uk/Publications/2012/12/4628
8. Part 4 (Sentencing) increases the maximum sentence for handling offensive weapons offences, places a specific duty on the court to consider whether it is appropriate to punish an offender for committing an offence while on early release, and increases the flexibility for different levels of court to consider imposing a punishment on such offenders.

9. Part 5 (Appeals and SCCRC) amends the 1995 Act to make changes to appeal procedures in the High Court and adjusts how the Appeal Court will consider Scottish Criminal Case Review Commission referrals.

10. Part 6 (Miscellaneous) creates a statutory aggravation of people trafficking which will apply in cases where an accused commits an offence connected with people trafficking. This Part also makes provision to enable the use of TV links by courts and establishes and sets out the functions for a Police Negotiating Board for Scotland.

11. Part 7 contains general and ancillary provisions.

**COMMENTARY ON SECTIONS**

**Part 1 – Arrest and custody**

**Chapter 1 – Arrest by police**

**Arrest without warrant**

*Section 1 – Power of a constable*

12. Section 1 sets out new powers of a police constable to arrest, without a warrant, a person suspected of having committed or to be committing an offence in Scotland. (Note, however, that the arrest regime under the Terrorism Act 2000 is unaffected by the Bill (see sections 50(b) and 53)).

13. Section 1(1) provides that a constable (defined in section 54) who has reasonable grounds to suspect that a person has committed or is committing an offence may arrest that person without a warrant.

14. Section 1(2) qualifies the power of a constable to arrest a person without warrant for having committed an offence which is not punishable by imprisonment. Not only must a constable have reasonable grounds for suspecting the person, the constable must also be satisfied that the “interests of justice” would not be met if the person was not immediately arrested for the offence. Section 1(3) sets out factors that may be relevant in applying the “interests of justice” test referred to in section 1(2).

*Section 2 – Exercise of the power*

15. Section 2 sets out how the power of arrest set out in section 1 can be exercised.
16. Section 2(1) provides that a person may be arrested under section 1 multiple times for the same offence (e.g. a person may be arrested, questioned and released and subsequently arrested again if, for example, further evidence comes to light).

17. Section 2(2) clarifies that the power to arrest again does not apply to persons who have been “officially accused” (defined in section 55) of having committed the offence or an offence arising from the same circumstances. For example, the police cannot use the power of arrest to arrest a person without a warrant if they have a warrant to arrest the person.

Procedure following arrest

Section 3 – Information to be given on arrest

18. Section 3 specifies the information which must be provided by a constable, as soon as is reasonably practicable, to an arrested person. The information will normally be provided immediately upon arrest.

Section 4 – Arrested person to be taken to police station

19. Section 4 sets out the requirement on a constable to take an arrested person to a police station as soon as is reasonably practicable after arrest (if not arrested there). By virtue of section 37 a constable may use reasonable force when doing so.

Section 5 – Information to be given at police station

20. Section 5 sets out the information that must be provided to a person taken to a police station under arrest and to those arrested whilst at a police station.

21. In particular, section 5(2) and (3) set out various matters that the arrested person must be informed of, as soon as reasonably practicable, e.g. their right not to say anything other than to provide information relating to their name, address etc.; their rights to have intimation sent, and to have access, to solicitors and, where appropriate, persons such as parents or other persons capable of giving support; and their rights under Articles 3 and 4 of Directive 2012/13/EU of the European Parliament and of the Council, including, for example, a letter of rights which contains basic information to assist persons in understanding their rights.

Section 6 – Information to be recorded by police

22. Section 6 details the information which must be recorded by the police when a person is arrested under section 1.

23. Section 6(1) provides a list of the information to be recorded in respect of all arrests.

24. Section 6(2) to (5) specifies the information that must be recorded in relation to a person arrested and held in police custody (defined in section 56) but not officially charged with an offence e.g. the timing and outcome of a police decision on whether to authorise their continued custody; the time and outcome of any review of continued custody; the time a person is released from custody on conditions or charged.
Chapter 2 – Custody: person not officially accused

Keeping person in custody

Section 7 – Authorisation for keeping in custody

25. Section 7(1) sets out the procedure for keeping a person in custody where the person has been not been arrested under a warrant or charged with an offence by a constable.

26. Section 7(2) provides that authorisation to keep the person in custody must be sought as soon as reasonably practicable after the person is arrested at a police station or arrives at a police station following arrest.

27. Section 7(3) and (4) provide that authorisation to keep a person in custody may only be given by a constable who has not been involved in the investigation in connection with which the person is in custody and if the test set out in section 10 is met. Section 7(5) provides that if authorisation is refused then the person can continue to be held in custody only if charged with an offence.

Section 8 – Information to be given on authorisation

28. Section 8 provides that at the time when authorisation is given to keep a person in custody under section 7, the person must be informed of the reason they are being kept in custody and that they may only be kept in custody without charge for a maximum of 12 hours.

Section 9 – Review after 6 hours

29. Section 9(1) and (2) provide that where a person has been held in police custody for a continuous period of six hours and has not been charged with an offence, a decision must be made on whether to continue to keep that person in custody. That decision must be made as soon as reasonably practicable after the expiry of the period of six hours which started when the authorisation under section 7 was given. In making that decision, the test set out in section 10 is applied (referred to below). Under section 9(3) the decision must be made by a constable of the rank of inspector or above, who has not been involved in the investigation in connection with which the person is in custody. If the test set out in section 10 is not met, the person may continue to be held in custody only if they are charged with an offence.

Section 10 – Test for sections 7 and 9

30. Section 10 sets out the test for keeping a person in custody under section 7(4) and reviewing continuation of that period of custody after six hours under section 9(2).

31. Section 10(1) provides that the test is that there are reasonable grounds for suspecting that the person has committed an offence and keeping the person in custody is necessary and proportionate for the purposes of bringing the person before a court or otherwise dealing with the person under the law. In considering what is “necessary and proportionate” regard may be had to (among others) the factors detailed in section 10(2).
Section 11 – 12 hour limit: general rule

32. Section 11 provides that a person may not continue to be held in custody after a continuous period of 12 hours unless that person is then charged with an offence by a constable. The period of 12 hours begins at the point when authorisation to keep a person in custody is given by a constable in accordance with section 7. After the expiry of 12 hours if the person is not charged, they must be released, perhaps conditionally, if appropriate (see section 14).

Section 12 – 12 hour limit: previous period

33. Where a person is held in custody on more than one occasion for the same or a related offence, section 12 provides that the 12 hour maximum period of custody (set out in section 11) is reduced by any earlier period during which the person was held in custody for that offence.

Section 13 – Medical treatment

34. Section 13(1) and (2) apply to a person who is taken into police custody having been arrested without a warrant, has not been charged with an offence and is at a hospital for the purpose of receiving medical treatment. They provide that authority to keep a person in custody may be given as though section 7 applies in the hospital as it does in a police station. For the purpose of calculating the 12 hour maximum period of custody set out in section 11, account will be taken of any time during which a person is at a hospital or travelling to one and is being questioned by a constable (section 13(4) to (6)). The same rules apply in calculating any previous period of custody (section 12(3)).

Investigative liberation

Section 14 – Release on conditions

35. Section 14 applies where a person is in police custody by virtue of the authorisation under section 7 (that is, where a person has been arrested without warrant and not charged, including a case where authorisation has been reviewed and continued under section 9) where a constable has reasonable grounds to suspect that the person has committed a relevant offence and the period of 28 days calculated in accordance with subsection (4) has not expired. As explained further below, the effect of section 14 is to enable the police to release such persons from police custody on conditions which may be applied for a maximum period of 28 days. It follows, that a person could not be released again on investigative liberation if arrested again after those 28 days have expired. The meaning of “relevant offence” is given in subsection (6).

36. Subsection (2) provides that a constable of the rank of inspector or above (subsection (5)) may authorise the release of a person from custody on any condition which is necessary and proportionate for the purpose of ensuring the proper conduct of the investigation into a relevant offence. The meaning of “relevant offence” is given in subsection (6).

37. Section 14(3) ensures that any condition imposed is treated as a liberation condition for the purposes of Chapter 7. This means that a breach of any condition may be penalised by a fine or a prison sentence as outlined in Chapter 7 and, a breach which would be an offence were the person not subject to liberation conditions may be taken into account in sentencing for that offence.
Section 15 – Conditions ceasing to apply

38. Section 15 provides when conditions imposed on a person under section 14(2) cease to apply: namely, (under section 16) if the condition is removed by the police by notice, if the person is arrested in connection with a relevant offence (“relevant offence” as defined by section 15(2)), if the person is officially accused of committing a relevant offence, at the end of the 28 day period (described in section 14(4)) or (under section 17) if the condition is removed as a result of an application for review made to a sheriff against the conditions.

Section 16 – Modification or removal of conditions

39. Section 16 enables a constable, by notice, to modify or remove any condition imposed by the police under section 14(2). A modified condition may be more or less onerous than the condition originally set. Under section 16(2) a notice about the modification or removal of a condition must be given in writing to the person who is subject to it and must specify the time from which the condition is modified or removed. Any modification or removal of a condition requires to be approved by a constable of the rank of an inspector or above. This power gives the police the flexibility to adjust conditions in light of changed circumstances.

40. Section 16(3) provides that a constable of the rank of inspector or above must keep under review whether or not there are reasonable grounds for suspecting that a person who is subject to a condition imposed under section 14(2) has committed a relevant offence (as defined in section 16(8)), and whether the condition imposed remains necessary and proportionate for the purpose of ensuring the proper conduct of the investigation into a relevant offence. If the inspector is no longer satisfied that there are reasonable grounds for suspecting that a person who is subject to a condition has committed a relevant offence, the person must be given notice of the removal of the condition. If no longer satisfied that a condition is necessary and proportionate, again the person must be given notice that the condition is being modified or removed.

41. Section 16(6) provides that any such notice must be given in writing to the person as soon as practicable and it must specify as the time from which the condition is modified or removed, the time at which the duty to give the notice arose i.e. the time at which the decision is made by an appropriate constable, to remove or modify the condition.

Section 17 – Review of conditions

42. Section 17(1) provides that a person who is subject to a condition imposed under section 14(2) may make an application for review to a sheriff.

43. Section 17(2) requires the sheriff to give the procurator fiscal an opportunity to make representations before the review is determined.

44. Section 17(3) provides that where the sheriff is not satisfied that the condition imposed is necessary and proportionate, the sheriff may remove it or impose an alternative condition which the sheriff considers to be necessary and proportionate for that purpose.

45. Section 17(4) provides that a condition imposed on review by the sheriff under section 17(3) is to be regarded as having been imposed by a constable under section 14(2). This
provides that in effect, the conditions set by the sheriff have the same effect and are to be taken as having taken effect when set by the police, i.e. the 28 day period is calculated from the date on which the police conditions were set. Conditions imposed by the sheriff can be modified or removed under section 16(1) in the same manner as police conditions.

Chapter 3 – Custody: person officially accused

Person to be brought before court

Section 18 – Person to be brought before court

46. Section 18(1) and (2) provide that, wherever practicable, persons kept in custody after being arrested under a warrant or arrested without a warrant and subsequently charged with an offence by a constable, must be brought before a court by the end of the next court day. For example, a person arrested at 11pm on a Tuesday and charged with an offence at 2am on the Wednesday would be due in court not later than the end of the court’s sitting on the Thursday.

47. Section 18(3) provides for persons to be considered to be brought before a court if appearing by television link.

Police liberation

Section 19 – Liberation by police

48. Section 19(1) and (2) provide that where a person is in custody having been charged with an offence, the police may: release that person on an undertaking under section 20, release the person without an undertaking or refuse to release. (Note the provisions do not apply where a person is in custody by virtue of a warrant granted under section 29(1)). It is also relevant to note that under section 41 a constable must take every precaution to ensure that a person is not unreasonably or unnecessarily held in police custody.

49. Section 19(3) provides that a constable will not be liable to any claim because of a refusal to release a person from custody.

Section 20 – Release on undertaking

50. Again, in considering whether to release a person on an undertaking the police will be mindful of their obligations under section 41 of the Bill (duty not to detain unnecessarily). Section 20(1) provides for a person to be released from police custody on an undertaking given under section 19(2)(a) only if they sign that undertaking.

51. Section 20(2) specifies the terms of an undertaking and section 20(3) and (4) set out the conditions that an appropriate constable (defined in section 20(5) as a constable of the rank of inspector or above) may impose.
These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 20 June 2013

52. Section 20(6) provides that the requirement imposed by an undertaking to attend at court and comply with conditions are to be taken to be liberation conditions for the purposes of Chapter 7 on breach of liberation conditions. This means that a breach of any condition may be penalised by a fine or a prison sentence as outlined in Chapter 7 and a breach which would be an offence were the person not subject to liberation conditions may be taken into account in sentencing for that offence.

Section 21 – Modification of undertaking

53. Section 21(1) enables the procurator fiscal by notice (effected as set out in section 21(5)) to modify an undertaking given under section 19(2)(a), either by changing the time or place of the court hearing or removing or altering a condition in the undertaking. The manner of citation may be effected, for example, by delivering the notice personally or leaving it at the person’s home.

54. Section 21(2) provides that any alteration to a condition in an undertaking should not make a condition more onerous on the person.

55. Section 21(3) provides for the procurator fiscal to rescind an undertaking. This would be appropriate, for example, if a decision is made not to prosecute. Section 21(4) provides for the circumstances in which an undertaking will expire.

Section 22 – Review of undertaking

56. Section 22(1) enables a person subject to an undertaking to apply to the sheriff for review.

57. Section 22(2) provides that the sheriff must provide the procurator fiscal with an opportunity to make representations with regard to the review. Section 22(3) provides that the sheriff may either remove a condition or impose any alternative condition that the sheriff considers to be necessary and proportionate.

Chapter 4 – Police interview

Rights of suspects

Section 23 – Information to be given before interview

58. Section 23 applies to a person who is either in police custody (defined in section 56) or has voluntarily attended a police station, or other place, for the purpose of being interviewed by the police.

59. It requires a constable to inform a person suspected of committing an offence of their rights at the most one hour before any interview commences. These rights are:

- the right not to say anything other than to provide the person’s name, address, date of birth, place of birth and nationality;
- the right to have a solicitor present during any interview; and
• if the person is being held in police custody, the rights detailed in Chapter 5, namely: the right to have another person informed that the person is in custody, the right to have a solicitor informed that the person is in custody and the person’s right of access to a solicitor whilst in custody.

60. Subsection (3) provides that if a person has already exercised their right to have another person or solicitor informed of their custody, then the police are not required to inform the person of these rights a second time.

61. For the purpose of this section, a constable is not to be regarded as interviewing a person about an offence merely by asking for the person’s name, address, date of birth, place of birth and nationality. As such, a constable does not have to inform the person of their rights, as detailed at subsection (2), before asking the person for these details.

Section 24 – Right to have solicitor present

62. This section provides for the right of a person reasonably suspected of committing an offence to have a solicitor present during police interview. It applies to a person who is either in police custody or has voluntarily attended a police station, or other place, for the purpose of being interviewed by a constable.

63. Section 24(3) provides that unless a person has consented to be interviewed without a solicitor present, a constable must not start to interview the person about the alleged offence until a solicitor is present and must not deny the solicitor access to the person at any time during interview.

64. Under subsection (4), a constable may start to interview the person without a solicitor present if satisfied it is necessary to interview the person without delay in the interests of the investigation or prevention of crime, or the apprehension of offenders. This is a high test. If a solicitor becomes available during such time as the police are interviewing a person, the solicitor must be allowed access to that person.

65. For the purpose of this section, a constable is not to be regarded as interviewing a person about an offence merely by asking for the person’s name, address, date of birth, place of birth and nationality. As such, a constable does not have to wait for a solicitor to be present before asking a person for these details.

66. Subsection (6)(a) and (b) provides for a record to be made of the time at which a person consents to be interviewed without a solicitor present and any reason the person gives for waiving the right to have a solicitor present. A person may revoke their consent at any time and in such a case the police must record the time at which a person requests that intimation is sent to a solicitor and the time that intimation is sent (section 6(1)(f) and (g)).

Section 25 – Consent to interview without solicitor

67. Subsection (2)(a) provides that a person under 16 years of age may not consent to be interviewed without a solicitor present.
68. Subsection (2)(b) provides that a person aged 16 years and over and, owing to a mental disorder (as defined in subsection (6)(a)), is considered by a constable to be unable to understand sufficiently what is happening or to communicate effectively with the police, may not consent to be interviewed without a solicitor present.

69. Subsections (3), (4) and (5) provide that a person who is 16 or 17 years of age and not suffering from a mental disorder may consent to be interviewed without a solicitor present with the agreement of a “relevant person”. If the person aged 16 or 17 years is in police custody, a “relevant person” means any person who could by virtue of section 32(2) visit the person. If the person aged 16 or 17 is not in police custody, a “relevant person” means a person who is at least 18 years of age and is reasonably named by the 16 or 17 year old.

**Person not officially accused**

*Section 26 – Questioning following arrest*

70. Section 26 enables a constable to question a person following arrest provided the person has not been officially accused of the offence (i.e. charged with the offence by the police or where a prosecutor has started proceedings in relation to the offence), or an offence arising from the same circumstances. The person has the right, however, not to answer any questions but must provide the police with their name, address, date of birth, place of birth and nationality.

71. Under subsection (3), the use, in evidence, of any answers given by a person during questioning is subject to the laws on admissibility. In general terms, this means that any questioning must be fair.

**Person officially accused**

*Section 27 – Authorisation for questioning*

72. Section 27 introduces a regime to allow the court to authorise a constable to question an accused person after the person has been officially accused of an offence or offences.

73. Subsection (1) confirms that the court may authorise a constable to carry out questioning once this stage has been reached. There is no provision for any other person, such as a prosecutor, to be so authorised.

74. Subsections (2) and (3) set out the circumstances in which the court can allow this questioning to take place. These provisions are designed to ensure that this power is exercised proportionately, having regard both to the rights of the accused person and to the public interest in gathering evidence in respect of an alleged criminal offence.

75. Thus subsection (2) provides that the court needs to be satisfied that the proposed questioning is in the interests of justice.

76. Subsection (3) sets out further factors which the court must take into account when deciding whether or not to authorise an application for questioning.
77. Subsection (5) applies where a court has granted an application to authorise questioning after the case has called in court, either having been commenced by means of a warrant, or where the accused has appeared in court. In those circumstances, subsection (4) gives the accused person the right to be heard by the court before any decision on the application is made. The person can be represented by a solicitor for these purposes, if the person wishes. It follows that the person has no similar right to be heard in respect of an application about a case which has not yet called in court.

78. Subsection (6) applies where the court has decided to grant the application and authorise questioning. In that event, subsection (6)(a) provides that the court must specify the length of time during which a constable may question the accused person. Subsection (6)(b) allows, but does not require, a court to place other conditions on the questioning to ensure that it is not unfair to the accused person. This might, for example, mean a restriction on the subject matter about which the accused person can properly be questioned.

79. Subsection (7) provides that there is no right of appeal against the decision of a court either to grant or refuse authorisation, or against any conditions imposed by the court under subsection (6)(b).

80. Subsection (8) defines the word “court” for the purposes of this section.

Section 28 – Authorisation: further provision

81. Section 28 makes further provision in respect of questioning after a person has been officially accused of an offence.

82. Subsection (1) sets out who may make an application for authorisation. Where the case against the accused person has called in court in terms of section 27(5), subsection (1)(a) provides that the application must be made by a prosecutor; otherwise the application should be made by a constable (subsection (1)(b)). In the former case, though, even if the application is granted, the questioning will be carried out by a constable, in terms of section 27(1); the prosecutor’s limited right to question an accused person at the inception of solemn proceedings only (generally known as “judicial examination”) is abolished by section 63 of this Bill.

83. Subsection (2) defines “prosecutor” for the purposes of subsection (1).

84. Subsection (3)(a) gives the High Court of Justiciary the power to prescribe, in an Act of Adjournal, the form in which a written application seeking authorisation must be made; and a written application should closely follow that form. Subsection (3)(b), by requiring an applicant to include details of any previous applications for authorisation to question the accused person, either about the same offence, or about another offence arising out of the same circumstances, will ensure that the court has information about any such previous applications.

85. Subsection (4) sets out when authorisation to question the accused person comes to an end: either when the period stipulated by the court under section 27(6)(a) expires; or, when the trial of the accused person starts. Subsection (5) defines when a trial is deemed to have started for this section.
86. Subsection (6) defines “authorisation” and “offence” for the purposes of this section.

Section 29 – Arrest to facilitate questioning

87. Where the police wish to question someone who has been officially accused of an offence, but is at liberty, section 29 provides that it will be open to the court to grant a warrant for the arrest of the accused person so the person can be detained for the purposes of questioning.

88. Subsection (1) provides that, when granting authorisation for questioning, a court can grant a warrant for the accused person’s arrest if it is expedient to do so.

89. Subsection (2) protects the accused person from indefinite detention, by requiring that if the court grants an application for a warrant it must put a time limit on the period for which the person can be detained to be questioned. Subsection (3) makes provision as to when the accused person’s detention, under a warrant granted in terms of this section, must come to an end.

90. Subsection (4) clarifies when an accused person’s detention under a warrant granted in terms of this section starts, making it possible to determine when the period specified in section 29(3)(a) has expired.

91. Subsections (5)(a) and (b) put it beyond doubt that a warrant under this section does not operate to recall or affect the operation of any bail order that the accused person might be on, whether in the same proceedings or not. While the accused person is in custody, having been detained and arrested on the warrant, subsection 24(5)(b) of the Criminal Procedure (Scotland) Act 1995, which makes it a condition of bail that the accused does not commit an offence while on bail, remains in force. This means that if the person commits an offence while detained in custody under a warrant granted in terms of this section, it would be a breach of that condition of bail. Once the accused person’s detention ends, the bail order applies in full, including any conditions attached to that order.

92. Similarly, subsection (5)(c) makes it clear that, where an accused person has been liberated on an undertaking in terms of section 19 of this Bill, the terms and conditions of the undertaking remain in force where a warrant is granted for the accused person, and continue in force after arrest and detention on that warrant.

Chapter 5 – Rights of suspects in police custody

Intimation and access to another person

Section 30 – Right to have intimation sent to other person

93. Section 30 affords a person in police custody the right to have someone else informed that the person is in police custody and where they are being held in custody.

94. This intimation must be sent as soon as reasonably practicable after the person arrives at a police station unless a delay is considered necessary in the interests of the investigation or prevention of crime, or the apprehension of offenders (subsection (5)). Where such a delay is required, it should be for no longer than necessary (subsection (4)(b)).
95. If a constable believes that the person in police custody is under 16 years of age, under subsections (2)(a) and (3)(a), a parent must be informed, regardless of whether the person requests that intimation be sent. The definition of a parent for this section and section 31 includes a guardian and any other person who has the care of the person (subsection (6)).

Section 31 – Right to have intimation sent: under 18s

96. Under this section, if a constable believes that a person in police custody is under 18 years of age, the person sent intimation under section 30 must be asked to attend at the police station or other place where the person is being held (subsection (2)). For those under 16 years this means a parent of the person and for those aged 16 and 17 years, an adult named by them (section 30(3)).

97. If a constable believes that a person in police custody is under 18 years of age and finds that the person to whom intimation is to be sent is not contactable within a reasonable time, or is unable or unwilling to attend in a reasonable time, then intimation must be sent to another appropriate person. An “appropriate person” for these purposes might be a parent or guardian or carer or as a final resort, a duty social worker from the local authority.

98. Where the person in police custody is believed to be under 16, attempts to send intimation must continue until an “appropriate person” is contacted and agrees to attend at the police station or other place the person is being held within a reasonable time. For these purposes, an “appropriate person” means a person the police consider appropriate having regard to the views of the person in police custody.

99. Where the person in police custody is believed to be 16 or 17 years of age, attempts to send intimation must continue until attempts to send intimation must continue until an “appropriate person” is contacted and agrees to attend at the police station or other place the person is being held within a reasonable time or the person in custody requests that, for the time being, no further attempts be made. For these purposes an “appropriate person” means an adult who is named by the person in custody and to whom a constable is willing to send intimation without delay.

100. Subsection (6) provides that, where the police delay sending intimation by virtue of section 30(4)(b) (which allows the police to delay sending intimation where the person to be contacted is someone the police fear will compromise the investigation or the apprehension of offenders), they must endeavour to contact another appropriate person in accordance with subsection (4)).

Section 32 – Right of under 18s to have access to other person

101. Section 32 provides for children under 18 years of age in police custody to have access to another person.

102. Under subsection (1) all children under 16 years of age in police custody must have access, in the first instance, to any parent (defined in subsection (4) to include guardians and carers) to provide support. Subsection (1)(b) ensures that where a parent is not available (that is, where they cannot be reached or are unable to attend within a reasonable time), the child has
access to another appropriate adult sent intimation under section 30, subject to the caveats in section 32(3).

103. Subsection (2) provides similar rights of access for those aged 16 or 17 years. However, in this case the adult granted access to the 16 or 17 year old does not have to be their parent (in line with section 30, which allows this age group to request that intimation be sent under that section to an adult other than their parent). As explained in section 31, intimation may be sent to more than one person. Access must be provided to at least one person (or more, if it is considered appropriate and in the best interests of the child), subject to the caveats in section 32(3).

104. In both subsection (1) and (2) the reference to reasonable time ensures that the police can provide access to another person where the parent (children aged under 16 years) or the initially and reasonably named person (children aged 16 or 17 years) cannot attend within a reasonable time.

**Vulnerable persons**

*Section 33 – Support for vulnerable persons*

105. Section 33 makes provision to identify vulnerable adults in police custody and to provide them with support to assist communication between them and the police. In practice, this support is provided by an Appropriate Adult though this term is not used in the Bill.

106. To ensure support is provided as soon as is reasonably practicable, subsections (1), (2) and (4) provide that, where a police constable (who may have been advised that a person is vulnerable following an initial assessment by the police custody and security officer, who is a uniformed non-warranted officer, whose duties include attending to the wellbeing of a person in their custody) considers that a person in police custody is age 18 or over and is unable, because of a mental disorder, to understand what is happening or to communicate effectively, they must make sure that an Appropriate Adult is told where the person is being held (this is not always at the police station and could be, for example, at a hospital) and that they require the support of an Appropriate Adult.

107. Subsection (3) provides that the role of the Appropriate Adult is to assist a vulnerable person to understand what is happening and to facilitate effective communication between the vulnerable person and the police.

108. Subsection (5) explains that “mental disorder” is as defined in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (i.e. “any mental illness, personality disorder, learning disability however caused or manifested”). It also explains that references to the police are to constables or members of police staff as provided for in section 99 of the Police and Fire Reform (Scotland) Act 2012. This ensures that a constable can delegate certain tasks, such as intimation to an Appropriate Adult, to a civilian member of police staff.
Section 34 – Power to make further provision

109. Section 34 gives the Scottish Ministers regulation making powers to amend the category of person entitled to support from an Appropriate Adult, and what that support should consist of. It also allows the Scottish Ministers to specify who may be considered a suitable person to provide support to a vulnerable person and what training, qualifications or experience are necessary to undertake this role.

Intimation and access to a solicitor

Section 35 – Right to have intimation sent to solicitor

110. Section 35 affords a person in police custody the right to have a solicitor informed, as soon as reasonably practicable after a request is made by the person in police custody, that the person is being held in police custody, where they are being held and that the professional assistance of a solicitor is required. If the person has been officially accused of an offence (i.e. charged with the offence by the police or where a prosecutor has started proceedings in relation to the offence), the person has the right to have a solicitor informed whether they are to be released from custody or, if not, of the court before which the person is to be brought and the day on which the person will be brought before court.

Section 36 – Right to consultation with solicitor

111. Section 36 provides for the right of a person in police custody to have a private consultation with a solicitor at any time. For the purposes of this section, a consultation is defined by subsection (3) as a consultation by such means as considered appropriate, for example, by telephone.

112. Under subsection (2) the police can delay the exercise of this right only so far as necessary in the interest of the investigation or prevention of crime, or the apprehension of offenders.

Chapter 6 – Police powers and duties

Powers of police

Section 37 – Use of reasonable force

113. Section 37 enables a constable to use reasonable force to effect an arrest and when taking a person in custody to any place.

Section 38 – Common law power of entry

114. Section 38 makes clear that any existing powers of a constable to enter any premises for any purposes are not affected by this Bill. Those powers remain.

Section 39 – Common law power of search etc.

115. Section 39(1) similarly preserves any existing powers of a constable in relation to a person arrested and charged, for example, to search them, seize items in their possession and place them in an identification parade (this list is not exhaustive).
Section 40 – Power of search etc. on arrest

116. Section 40 makes clear that the powers described in section 39(2) which can be exercised by a constable in relation to a person after arrest and charge can also be exercised between a person’s arrest and the person being charged.

Duties of police

Section 41 – Duty not to detain unnecessarily

117. Section 41 provides that a constable must ensure that a person is not unreasonably or unnecessarily held in police custody.

Section 42 – Duty to consider child’s best interests

118. Section 42 states that in making decisions to arrest a child (defined for this section in subsection (3) as a person under 18 years of age), hold a child in police custody, interview a child about an offence which the child is suspected of committing, or charge a child with an offence, a constable must treat the need to safeguard and promote the well-being of the child as a primary consideration. This does not mean that the interests of the child are the only consideration or that they are, in all cases, the most important consideration. For example, the need to protect others may prevail.

Chapter 7 – Breach of liberation condition

Section 43 – Offence where condition breached

119. Section 43(1) sets out the circumstances in which a person breaches a liberation condition and thereby commits an offence. A “liberation condition” includes investigative liberation conditions imposed before charge under section 14(2) or requirements imposed by an undertaking given after charge under section 19(2). Section 43(2) provides that section 43(1) does not apply when a person breaches a liberation condition by reason of committing an offence. Such breaches are dealt with in accordance with section 45. An example of a breach of condition which may, of itself, not constitute a separate offence is a condition not to enter a particular street. If the person subject to the condition is subsequently found in that street, then a breach of liberation has occurred, but not a separate offence. If the condition was that the person was not to approach a particular witness in the case and the person does contact the witness then not only has a breach of condition occurred, but a more serious offence (attempting to defeat the ends of justice) may have taken place.

120. Section 43(3) provides that a complaint may be amended to add an additional charge of an offence of breaching a liberation condition at any time before the trial of an accused for either the original offence (see section 43(4)) or an offence arising from the same circumstances as that offence.

Section 44 – Sentencing for section 43 offence

121. Section 44(1) sets out the penalties applicable to a person convicted of an offence of breaching a liberation condition under section 43. Sections 44(2) to (3) provide that such a penalty may be imposed in addition to any other penalty that may be imposed, even if the total
exceeds the maximum penalty for the original offence. The penalties should run consecutively, subject to section 204A of the Criminal Procedure (Scotland) Act 1995 which concerns restriction on consecutive sentences for released prisoners. The provisions put beyond doubt that the penalty imposed for breach of the condition can be imposed on top of the penalty for original offence, even where the penalty imposed for the original offence represents the maximum penalty applicable in the circumstances.

122. Subsections (5) and (6) provide that where a court finds a person guilty of breaching a liberation condition, or the person pleads guilty to that offence, the person may be sent for sentence at any court which is considering the original offence (as defined in subsection (7).

Section 45 – Breach by committing offence

123. Section 45 applies where a person breaches a liberation condition by committing an offence and the fact that the offence was committed whilst the person was subject to a liberation condition is specified in the complaint or indictment. This is distinct from failing to comply with a condition and applies where the person is being prosecuted for the offence committed while on liberation conditions.

124. Section 45(2) requires the court, in determining the penalty for the offence, which constituted the breach of condition, to have regard to the matters specified.

125. Section 45(3) and (4) enable the court to increase the maximum penalty otherwise specified for the offence. This provision effectively displaces the maximum penalty, allowing the court to add to the penalty to take account of the fact that a breach of conditions has occurred as a consequence of the commission of an offence.

126. Section 45(5) requires the court to explain the reasons for the penalty imposed for the offence, whether it imposes an increased penalty or not.

Section 46 – Matters for section 45(2)(b)

127. Where a person breaches an investigative liberation condition, as defined in section 49(a), by committing an offence, the court must have regard to the matters specified in section 46 in determining the penalty.

Section 47 – Matters for section 45(2)(c)

128. Where a person breaches the terms of an undertaking, as defined in section 49(c), (other than the requirement to appear to court) by committing an offence, the court must have regard to the matters specified in section 47 in determining the penalty.

Section 48 – Evidential presumptions

129. In proceedings relating to an offence under section 43(breach of liberation conditions), the evidential presumptions sets out in section 48 apply.
Chapter 8 – General

Common law and enactments

Section 50 – Abolition of pre-enactment powers of arrest

130. Section 50 provides that the only power of arrest which the police have to bring a person into police custody comes from Section 1 of this Bill and Section 41(1) of the Terrorism Act 2000.

Section 51 – Abolition of requirement for constable to charge

131. Section 51 provides that a constable does not have to charge a suspect with a crime at any time and abolishes any rule of law that requires such a charge to be made.

Section 52 – Consequential modification

132. Section 52 provides that schedule 1 to the Bill contains details of changes to existing legislation as a consequence of Part 1. Paragraph 242 provides further detail in regard to schedule 1.

Disapplication of Part

Section 53 – Disapplication to terrorism offences

133. Section 53 provides that Part 1 of the Bill, dealing with arrest and custody, does not apply to persons arrested under the Terrorism Act 2000.

Interpretation of Part

Section 54 – Meaning of constable

134. Section 54 defines the meaning of constable for the purposes of this Part.

Section 55 – Meaning of officially accused

135. Section 55 defines the meaning of the term “officially accused” for the purposes of this Part.

Section 56 – Meaning of police custody

136. Section 56 defines the meaning of police custody for the purposes of this Part.

Part 2 – Corroboration and statements

Abolition of corroboration rule

Section 57 – Corroboration not required

137. Section 57 provides that, subject to the conditions set out in sections 58 and 59, where a fact has been established by evidence in any criminal proceedings, the judge or jury is entitled to find the fact proved by the evidence although the evidence is not corroborated.
138. The effect of this provision is to abolish the requirement in Scots common law that the essential facts of a case must be proven by corroborated evidence, which is to say evidence from two separate sources.

Section 58 – Effect of other enactments

139. Section 58 provides that the removal of the requirement for corroboration does not apply where an enactment specifically provides that, in relation to proceedings for an offence, a fact requires to be proven by corroborated evidence (for example, section 89(2) of the Road Traffic Regulation Act 1984, which provides that a person cannot be convicted for speeding on the uncorroborated evidence of one witness that the person was breaking the speed limit).

Section 59 – Relevant day for application

140. Section 59 provides that section 57 only applies in relation to proceedings for an offence committed on or after the date on which section 57 comes into force. The date on which section 57 comes into force will be specified by the Scottish Ministers in an order under section 90(2).

Section 60 – Deeming as regards offence

141. Section 60 provides that where an offence is committed over a period of time which includes the date on which section 57 comes into force, the requirement for corroborative evidence does not apply to the offence as a whole; meaning that corroborative evidence is not needed to prove those parts of the offence which took place before the date on which section 57 comes into force.

Section 61 – Transitional and consequential

142. Section 61 introduces schedule 2, which contains transitional and consequential provision relating to the removal of the requirement for corroboration. Schedule 2 is explained in paragraphs 243 to 247 of these Notes.

143. Section 61(3) provides that the consequential modifications provided for in Part 2 of schedule 2 only have effect in relation to criminal proceedings to which section 57, removing the requirement for corroboration, applies.

Statements by accused

Section 62 – Statements by accused

144. Section 62 inserts new section 261ZA into the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). New section 261ZA will modify the common-law rule on the admissibility of hearsay evidence in criminal proceedings, as it applies to certain types of statement made by an accused.

145. Section 261ZA(1) and (2) provide that evidence of a statement made by an accused in certain circumstances is not inadmissible as evidence of a fact contained in the statement on account of the evidence being hearsay. The provision applies to a statement made by the accused in the course of being questioned (whether as a suspect or not) by a constable or another official investigating an offence.
146. The provision modifies the law relating to hearsay. As explained by the High Court of Justiciary in *Morrison v HM Advocate* 1991 SLT 57, “The general rule is that hearsay, that is evidence of what another person has said, is inadmissible as evidence of the facts contained in the statement”. That general rule is subject to exceptions. The existing common-law exceptions (discussed in *McCutheon v HM Advocate* 2002 SLT 27) allow for a statement made by the accused to be admitted as evidence of a fact contained in the statement if it is inculpatory of the accused (e.g. a confession) or “mixed” (e.g. a statement in which the accused puts himself or herself at the locus at the time the offence was committed, but does so in the context of proffering an innocent explanation for why the accused was there). The common-law does not, however, allow evidence of a statement made by the accused to be admitted as evidence of a fact asserted in the statement if the statement is purely exculpatory of the accused.

147. Subject to subsection (3), section 261ZA extends the exceptions by dispensing with the distinctions between inculpatory, exculpatory and mixed statements. The effect is that any statement made by an accused person to a constable or another official investigating an offence is excepted from the general rule that hearsay evidence is not admissible as evidence of a fact contained in the statement, regardless of whether it is inculpatory, exculpatory or “mixed”.

148. By virtue of subsection (3), section 261ZA does not affect the admissibility of evidence of a statement made by an accused as evidence in relation to a co-accused. Section 261 of the 1995 Act lays down special rules which apply before hearsay evidence of a statement by one accused can be admitted in evidence in relation to another accused. Those rules will continue to apply before evidence of a statement made by accused A can be treated as evidence of fact in the case for or against accused B.

149. New section 261ZA is restricted in its effect to superseding objections to the admissibility of evidence based on its hearsay quality. The provision does not override any other objections to the admissibility of evidence of a statement, such as objections to its admissibility based on the fairness of the circumstances in which the statement was made, or based on the content of the statement (for example, section 274 of the 1995 Act, which concerns the admissibility of evidence relating to the sexual history or character of a complainer in a sexual offence case, will still apply).

**Part 3 – Solemn procedure**

*Section 63 – Proceedings on petition*

150. Section 63 changes the procedure to be followed at what are usually the first court appearances of a person being prosecuted under solemn procedure, when the person appears on petition.

151. The purpose of these provisions is to abolish the procedure, commonly known as judicial examination, whereby the prosecutor can, at the commencement of a case being prosecuted under solemn procedure, question the accused in the presence of the sheriff. In addition, the section 63 removes the rarely-used option for the accused to make a declaration – broadly, a statement of his or her position in respect of the charge or charges on the petition – at that stage in proceedings.
152. Subsection (1) inserts a provision into the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) which removes the accused’s common-law right to be given the opportunity to make a declaration at the commencement of a case being prosecuted under solemn procedure.

153. Subsection (2) both removes from statute various provisions which relate to declarations, and abolishes the procedure known as judicial examination.

154. Subsection (2)(a) removes, from the 1995 Act, provisions which govern the making of declarations, and the right of the prosecutor to question the accused on extra-judicial confessions.

155. Subsection (2)(b) removes from the 1995 Act three sections which enable and regulate procedure at judicial examinations. By so doing, it abolishes the procedure.

156. Subsections (2)(c), (2)(d), and (2)(e) remove from the 1995 Act various provisions in respect of any records made of a judicial examination. These changes are consequential to the abolition of the judicial examination procedure by subsection (2)(b).

Section 64 – Citation of jurors

157. Section 64 removes from section 85(4) of the Criminal Procedure (Scotland) Act 1995 the requirement to cite potential jurors by registered post or recorded delivery. It thereby allows potential jurors to be cited by any means the sheriff clerk thinks appropriate, which may include electronic means.

Section 65 – Pre-trial time limits

158. Sections 65 to 67 make changes to the procedure followed in proceedings on indictment in the sheriff court.

159. Section 66 introduces a requirement on the prosecution and the defence to communicate and to lodge a written record of their state of preparation in advance of the first diet.

160. Section 67 provides that the arrangement by which a sheriff court indictment assigns dates for both the first diet and the trial ceases to have effect. Instead the court will appoint a trial diet at the first diet, or at a continuation of it, having ascertained the parties’ state of preparation.

161. Section 65 makes changes to the time limits prescribed in section 65 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) which are intended to allow time for the procedure set out in section 66. In particular the period during which the accused can be remanded in custody pending a first diet and trial are brought in line with the corresponding High Court limits to reflect the altered pre-trial procedure.

162. Subsection (2) amends section 65 of the 1995 Act to set out revised time limits for various procedural steps in proceedings on indictment in the sheriff court.

163. The amendments made by subsection (2)(a) and (b) prevent the accused being tried on indictment in the sheriff court where the first diet is not commenced within 11 months of the first
appearance on petition. That period can be extended by the court under section 65(3) of the 1995 Act. The 12-month period within which the trial must be commenced, as specified in section 65(1)(b) of the 1995 Act is unaffected. The amended provisions mirror the equivalent arrangements for proceedings in the High Court.

164. Subsection (2)(c) amends the provisions in section 65(4) of the 1995 Act concerning the periods during which the accused person who is committed until liberated in due course of law (i.e. imprisoned to await the outcome of a trial) can be detained by virtue of that committal where an indictment has been served in respect of the sheriff court. The effect of the amendment is that the accused person must be liberated after 110 days, if no first diet has been held, and 140 days if such a diet has been held, unless the trial begins within that period. These periods can be extended by the court under section 65(5) of the 1995 Act. Again, the amended provisions mirror High Court procedure. To assist in the calculation of the time period, subsection (2)(d) amends section 65(9) of the 1995 Act to provide that the first diet in the sheriff and jury court shall be taken to commence when it is called.

165. Subsection (3) amends section 66(6) of the 1995 Act to replace the arrangements whereby an accused person is to be tried on indictment in the sheriff court is given notice of the first diet and trial diet at the same time as being served with the indictment. Instead, the accused will be given notice only of the first diet and the date of the trial diet will be fixed at the first diet. The period within which the first diet must take place will be increased from 15 clear days from the service of the indictment to 29 clear days; this change makes the sheriff court practice consistent with High Court practice.

166. Subsection (4) amends section 72C(4) of the 1995 Act for consistency with the amendment made by subsection (3). Section 72C(4) is a provision in similar terms to section 66(6), it deals with the situation where a fresh indictment has to be served on an accused because a preliminary hearing before the High Court either did not take place when it was supposed to, or was deserted for the time being without another hearing being appointed.

Section 66 – Duty of parties to communicate

167. Section 66 amends the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) to impose a duty on the prosecution and the defence, in cases indicted to the sheriff court, to communicate and to prepare a written record of their state of preparation.

168. Subsection (2) amends section 71 of the 1995 Act by inserting a new subsection (1ZA) which requires the court to have regard to the written record when ascertaining the parties’ state of preparation at the first diet.

169. Subsection (3) inserts a new section 71C into the 1995 Act. Subsection (2) of this new section requires the prosecutor and the accused’s legal representative (as defined in subsections (8) and (9)) to communicate and jointly to prepare a written record of the state of preparation of their respective cases. The requirement arises where the accused is indicted to the sheriff court and is represented by a solicitor (new section 71C(1)).
170. Subsection (3) of the new section 71C provides that the period within which the communication must take place, and within which the written record of the state of preparation must be prepared is the period beginning with the service of the indictment and ending 14 days later. Subsection (4) provides that the written record thus established must be lodged with the sheriff clerk at least two days before the first diet, though the court may, on cause shown, extend this deadline (subsection (5)).

171. Subsection (6) of the new section 71C provides for the form, content, and arrangements for lodging of the written record, to be prescribed under an Act of Adjournal. Subsection (7) provides that the record must include a statement of how the communication required by this new section took place. Subsection (7) gives examples of the means by which the communication may take place, but the examples are not exhaustive of the means that might be employed.

172. Section 66(4) of the Bill amends section 75 of the 1995 Act to include a reference to the period mentioned in section 71C. This ensures that, where the 14 day period referred to in section 71C(3) ends on a weekend or on a court holiday, it is extended to include the next day that is not a Saturday, Sunday or court holiday.

Section 67 – First diets

173. Section 67 deals with the procedure at first diets in proceedings on indictment in the sheriff court.

174. Subsection (2) amends section 66 of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). Subsection (2)(a) requires the notice served on the accused with the indictment to include a warning to the accused that the first diet may proceed in his or her absence and that a trial diet may be fixed in his or her absence. This is distinct from the intimation that requires to be given by virtue of section 66(6AA) where the accused is a body corporate. However, even if the notice does not contain this warning, the amendment to section 66(6B) of the 1995 Act made by subsection (2)(b) ensures that the validity of the notice, and other procedure against the accused, is not invalidated by the omission.

175. Subsection (3) amends section 71 of the 1995 Act. The amendments provided for in subsection (3)(a), (b) and (d) are consequential on the new arrangements whereby the trial diet is appointed at the first diet (see discussion below of new section 71B). Subsection (3)(c) ensures that the requirement in section 71(6) that the accused should be called upon to plead at the first diet does not prevent the first diet proceeding in the absence of the accused. Subsection (3)(e) extends to the new section 71B discussed below the definition of the word "court" in section 71 of the 1995 Act, so that in the new section 71B references to the court will be understood as references to the sheriff court only.

176. Subsection (4) inserts a new section 71B into the 1995 Act, to deal with appointment of a trial diet at the first diet.

177. Subsection (1) of the new section 71B provides that, having taken the steps and examined the issues required at the first diet, the court only then goes on to appoint a trial. The appointing
These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 20 June 2013

of a trial has to be in accordance with subsections (3) to (7), which are discussed below. Subsection (2) requires the accused to appear at the trial diet.

178. Subsections (3) and (4) of the new section 71B apply when a case is subject to the requirement that the trial must commence within 12 months of the accused’s first appearance on petition. If the court considers that the case would be likely to be ready to proceed to trial within the 12 months (which may not be 12 months from the petition appearance, because the period can be extended under section 65(3) of the 1995 Act) the court must, subject to subsections (5) to (7) appoint a trial within the 12 month period. If the court does not think the case will be ready to proceed within the 12 months, the prosecutor must be given an opportunity to seek an extension of the 12 month period. If an extension is granted the court must, again subject to subsections (5) to (7), appoint a trial within the 12 month period as extended. If the period is not extended the court may desert the first diet (either permanently or for the time being only) and if the accused is being held in custody pending trial, the accused must be liberated.

179. Subsections (5) to (7) of the new section 71B apply where, in addition to the court being required to appoint a trial diet within the 12 month period under subsection (3) or (4), the accused has been committed until liberated in due course of law (i.e. imprisoned to await the outcome of a trial) and cannot be detained by reason of that committal for more than 140 days without being put on trial. In that event, as well as appointing a trial diet within the 12 month period, the court must appoint a trial within the 140 day period if it is satisfied that the case will be ready to go to trial within that period. If the court is not satisfied about that, the prosecutor must be given an opportunity to apply for an extension of the 140 day period. If an extension is granted the court must appoint a trial for a date within the 140 day period as extended (as well as within the 12 month period). If the period is not extended the accused is entitled to be admitted to bail. In that event, subsection (8) requires the court to give the prosecutor an opportunity to be heard before admitting the accused to bail.

180. Where the court has appointed a trial diet for an accused on bail (other than in the circumstances where the accused has been bailed as described in the previous paragraph) subsection (9) of the new section 71B requires that the court must review the accused’s bail conditions and empowers it, if it considers it appropriate, to set different conditions.

181. Subsection (10) of the new section 71B defines the 12 month and 140 day time limits with reference to the applicable provisions of section 65 of the 1995 Act.

182. Subsection (5) of section 67 amends section 76(3) the 1995 Act which makes provision for the situation where a diet fixed as a result of an intimation given by the accused under section 76(1) (that he intends to plead guilty) does not result in pleas being accepted in respect of all charges. The amendment allows the court to postpone a first diet where a case has been indicted to the sheriff court on the same basis as the power to postpone a preliminary hearing where the case has been indicted to the High Court.

183. Subsection (6) inserts a new section 83B into the 1995 Act applying to jury trials in the sheriff court. The section allows trials that have not yet been commenced to be continued from sitting day to sitting day, up to a maximum number of sitting days after the day originally appointed for the trial, the maximum being set by Act of Adjournal. Failure to commence the
trial by the end of the last sitting day permitted results in the indictment falling and proceedings against the accused coming to an end.

Section 68 – Preliminary hearings

184. Section 68 reverses the effect of amendments to section 72A of the Criminal Procedure (Scotland) Act 1995 effected by section 7(3) of the Vulnerable Witnesses (Scotland) Act 2004. The amendments, which relate to proceedings in the High Court, were mistakenly applied after the section to which they related was repealed by the Criminal Procedure (Amendment) (Scotland) Act 2004, and replaced with another section with the same number.

Section 69 – Plea of guilty

185. Section 69 repeals that part of section 77(1) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) which requires that the accused pleading guilty to an indictment should sign a copy of the plea. Section 70(7) of the 1995 Act, which provides for an exception to the signing requirement where the accused pleading guilty is an organisation, is thereby rendered obsolete and is also repealed.

Section 70 – Guilty verdict

186. Section 70 amends the law concerning the size of the majority required for a jury to return a verdict of guilty, in both the High Court and the sheriff court.

187. Subsection (1) repeals section 90(2) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) which prescribes conditions for the returning of a verdict of guilty where the size of the jury in a criminal trial falls below 15.

188. Subsection (2) inserts new section 90ZA into the 1995 Act. Section 90ZA(1) provides that a jury of 15 members may return a verdict of guilty only if at least 10 of them are in favour of that verdict.

189. Section 90ZA(2) sets out the number of jurors required to return a verdict of guilty where the jury size falls below 15. In each case, a majority of at least two thirds of the jurors is required.

190. Section 90ZA(3) provides that a jury is to be regarded to have returned a verdict of “not guilty” if it does not return a verdict of “guilty” in accordance with subsection (1) or (2) and there is no majority in favour of either a “not guilty” or “not proven” verdict.

Part 4 – Sentencing

Maximum term for weapons offences

Section 71 – Maximum term for weapons offences

191. The Criminal Law (Consolidation) (Scotland) Act 1995 creates the following offences:
   • carrying an offensive weapon in a public place (section 47);
possessing an article with a blade or point in a public place (section 49);
possessing an article with a blade or point (or weapons) on school premises (section 49A);
having an offensive weapon etc. in prison (section 49C).

192. Section 71 of the Bill increases the maximum penalty for each of those offences from 4 to 5 years.

Prisoners on early release

Section 72 – Sentencing under the 1995 Act

193. Section 72 of the Bill inserts a new section 200A into the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). New section 200A(1) of the 1995 Act provides that when the court is dealing with a person who has been found to have committed an offence that is capable of being punishable with imprisonment (except where the offence is such that the court is required to impose a life sentence), the court must so far as is reasonably practicable ascertain whether the person was on early release from a previous sentence at the time the offence was committed.

194. Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”), Part II of the Criminal Justice Act 1991 or Part 12 of the Criminal Justice Act 2003 provide for the operation of release from custody of a prisoner prior to the end of a prisoner’s sentence. The operation of these provisions is commonly known as “early release” arrangements. For the purposes of new section 200A, new section 200A(3) provides that a person is on early release if they are not in custody as a result of the operation of Part I of the 1993 Act, Part II of the Criminal Justice Act 1991 or Part 12 of the Criminal Justice Act 2003.

195. Section 16 of the 1993 Act provides the court with a power to be able to punish a person who commits an offence while on early release. This power is separate and additional to the normal powers of the court to sentence the person for having committed the offence. These powers are commonly known as section 16 orders and can be seen as a punishment on a person for having abused the trust placed in them by committing an offence while on early release.

196. New section 200A(2) provides that where the court has determined under new section 200A(1) that a person was on early release at the time the offence was committed, the court must consider making a section 16 order.

197. New section 200A(2) also provides that in the case where the court dealing with the offence is inferior to the court which imposed the previous sentence from which the person was released early, an inferior court must consider making a reference to the court which imposed the previous sentence so that they can consider making a section 16 order. This is subject to the new powers being given to inferior courts to make section 16 orders contained in section 73(4) of the Bill.
Section 73 – Sentencing under the 1993 Act

198. Where an offence (“the new offence”) has been committed while a person was on early release, section 16(2) of the 1993 Act provides that a Scottish court may, instead of or in addition to imposing a sentence for plea or finding of guilt, order that a person may be returned to prison for a period of time. This period can be up to a maximum length equal to the period of time between the date on which the new offence was committed and the date of the expiry of their previous sentence. Section 16(2)(b) of the 1993 Act provides that where the court dealing with the new offence is inferior to the court which imposed the sentence from which the person was released early, the inferior court cannot directly impose a section 16 order and can only refer the case to the higher court for consideration to be given as to whether a section 16 order should be imposed.

199. Section 73(2) of the Bill adjusts section 16(1) of the 1993 Act so that prisoners released early under Part 12 of the Criminal Justice Act 2003 can have section 16 orders imposed upon them.

200. Section 73(4) of the Bill inserts new section 16(2A) into the 1993 Act. New section 16(2A) provides new discretion for courts dealing with persons who have committed offences while on early release from a previous sentence imposed by a higher court. The effect of the new discretion is that inferior courts will be able to consider making a section 16 order in such cases.

201. The powers of inferior courts to impose section 16 orders are restricted to those cases where the maximum length of a section 16 order does not exceed the sentencing powers of the court in respect of common law offences. Section 7(6) of the 1995 Act provides that a Justice of the Peace court can impose a custodial sentence for common law offences of up to 60 days. Section 5(2) of the 1995 Act provides a sheriff's summary court, including when constituted by a stipendiary magistrate (by virtue of section 7(5) of the 1995 Act), can impose a custodial sentence for a common law offence of up to 12 months. Section 3(3) of the 1995 Act provides a sheriff solemn court can impose a custodial sentence for a common law offence of up to 5 years.

202. New section 16(2A)(b)(i) provides that a Justice of the Peace court, except when constituted by a stipendiary magistrate, will be able to impose a section 16 order in cases where the maximum length of a section 16 order does not exceed 60 days.

203. New section 16(2A)(b)(ii) provides that a Justice of the Peace court constituted by a stipendiary magistrate or a sheriff sitting summarily (i.e. without a jury) will be able to impose a section 16 order in cases where the maximum length of a section 16 order does not exceed 12 months.

204. New section 16(2A)(b)(iii) provides that a sheriff sitting as a court of solemn jurisdiction (i.e. with a jury) will be able to impose a section 16 order in cases where the maximum length of a section 16 order does not exceed 5 years.

205. Section 73(3) makes consequential changes to section 16(2) reflecting the insertion of new section 16(2A) into the 1993 Act.
Part 5 – Appeals and SCCRC

Appeals

Section 74 – Preliminary pleas in summary cases

206. Section 174 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) allows for decisions disposing of certain objections and denials in summary proceedings, including objections to the competency and relevancy of the complaint, to be appealed to the High Court where the first instance court gives permission for the appeal. Section 74 of the Bill amends section 174 of the 1995 Act by removing the requirement to obtain permission for an appeal by the prosecutor against a decision that has resulted in the dismissal of the complaint, or any part of it.

Section 75 – Preliminary diets in solemn cases

207. Section 74 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act) allows for decisions taken at first diets and preliminary hearings to be appealed to the High Court where the first instance court gives permission for the appeal. Section 75 of the Bill amends section 74 of the 1995 Act by removing the requirement to obtain permission for an appeal by the prosecutor against a decision that has resulted in the dismissal of the indictment, or any part of it.

Section 76 – Extending certain time limits: summary

208. Section 76 amends section 181 of the Criminal Procedure (Scotland) Act 1995 Act (“the 1995 Act”) so as to make further provision concerning applications to extend certain time limits that apply in relation to appeals from summary proceedings.

209. Subsection (2) inserts provisions prescribing the test to be applied by the High Court when determining an application to extend the period within which a convicted person may apply for a stated case. Subsections (3) and (4) omit the provisions under which the respondent in relation to an application under section 181(1) of the 1995 Act may insist on a hearing. Subsection (5) inserts section 181(5) which requires the court to give reasons in writing for a decision to extend a period on an application under section 181(1).

210. By virtue of section 186(8) of the 1995 Act, the amendments effected by section 76 of the Bill also have effect in relation to certain applications to extend the period allowed for the lodging of a note of appeal under section 186.

Section 77 – Extending certain time limits: solemn

211. Section 77 makes provision concerning applications to the High Court under section 111(2) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) applications to extend the period within which a convicted person may lodge intimation of intention to appeal, or a note of appeal.

212. Subsections (3) to (6) amend section 111. Subsection (3) inserts provisions prescribing the test to be applied by the High Court when determining an application under section 111(2) when it is received after the expiry of the period to which it relates. Subsection (4) amends
section 111(2A) so as to extend to every application under section 111(2) the requirement on the applicant to state reasons for the failure to comply with the applicable time limit and to state the proposed grounds of appeal. Subsection (6) inserts section 111(4) which provides that applications under section 111(2) are to be dealt with in chambers and, unless the court otherwise directs, without parties being present. Subsections (1) and (5) contain amendments that are consequential on this change. Subsection (6) also inserts section 111(5) which requires the court to give reasons in writing for a decision to extend a period.

Section 78 – Certain lateness not excusable

213. Section 78 amends section 300A of the Criminal Procedure (Scotland) Act 1995 by inserting a new subsection (7A). Section 300A gives courts a general power to excuse failures to comply with procedural requirements. The amendment precludes a failure to timeously lodge certain documents from being excused under section 300A. The documents in question are those which the High Court can permit being lodged late by applying the tests that are to be amended by sections 76 and 77 of the Bill (i.e. documents used to initiate appeals from, respectively, summary and solemn proceedings).

Section 79 – Advocation in solemn proceedings

214. Section 79 inserts section 130A into the Criminal Procedure (Scotland) Act 1995, which provides that it is not competent for a decision taken at a first diet or preliminary hearing to be appealed to the High Court by bill of advocaton. The provision excludes bill of advocation as a competent method of appealing a decision that could be appealed under the procedure provided for in section 74 of the 1995 Act.

Section 80 – Advocation in summary proceedings

215. Section 80 inserts section 191B into the Criminal Procedure (Scotland) Act 1995. The new section applies to decisions disposing of certain objections and denials which require to be stated before a plea is tendered in summary proceedings, including objections to the competency or relevancy of a complaint. Such decisions can be appealed to the High Court under the procedure provided for in section 174 of the 1995 Act. The new section provides that such decisions cannot also be competently appealed by way of bill of advocation.

Section 81 – Finality of appeal proceedings

216. Section 81(1) amends section 124(2) of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") (as amended by section 36(11) of the Scotland Act 2012) by removing references to section 288ZB of the 1995 Act.

217. Section 81(2) inserts a new section 194ZA into the 1995 Act. Subject to the exceptions specified, the new section provides that decisions of the High Court when disposing of an appeal related to summary proceedings are final and conclusive and not subject to review by any court whatsoever. The new section is in similar terms to the corresponding provision in section 124(2) of the 1995 Act, which relates to decisions of the High Court when disposing of appeals from solemn proceedings.
SCCRC

Section 82 – References by SCCRC

218. Section 82 of the Bill amends the Criminal Procedure (Scotland) Act 1995 to adjust how the High Court considers cases referred to it by the Scottish Criminal Cases Review Commission (“the SCCRC”).

219. Section 82(2) of the Bill inserts new subsection (1A) into section 194B of the 1995 Act and provides that the High Court can only quash a conviction or sentence if it is satisfied that it is in the interests of justice to do so. New subsection (1B) provides that when the High Court is considering the interests of justice, they must have regard to the requirement for finality and certainty in the determination of criminal proceedings.

220. Section 82(4) of the Bill repeals section 194DA of the 1995 Act so that the High Court will no longer have the power to reject a SCCRC reference without hearing the appeal.

221. The overall effect of section 82 is that the High Court will apply the interests of justice test alongside hearing an appeal based on a SCCRC reference, rather than applying the interests of justice in order to decide whether to allow an appeal based on a SCCRC reference to be heard.

Part 6 – Miscellaneous

Chapter 1 – Procedural matters

Aggravation as to people trafficking

Section 83 – General aggravation of offence

222. Section 83 makes provision for a statutory aggravation which applies in cases where an accused commits an offence connected with people trafficking. Subsection (1) applies where an indictment or complaint libels or specifies that an offence is aggravated by a connection with people trafficking activity and it is subsequently proved that the offence is so aggravated.

223. Subsection (2) sets out the circumstances in which an offence can be regarded to have been aggravated by a connection with people trafficking. This relies on proof that the accused was motivated, in whole or in part, by the objective of committing or conspiring to commit a people trafficking offence. In terms of subsection (3), it is not material to establishing the aggravation whether or not a people trafficking offence (as defined in section 85(1)) was committed at any time or by the offender or another specific person.

224. Subsection (4) sets out the steps the court must take when it is libelled in an indictment or specified in a complaint that an offence is aggravated by a connection with people trafficking and proved that the offence is so aggravated. In addition to a number of formal matters, the court must take the aggravation into account in determining the appropriate sentence.
Section 84 – Aggravation involving public official

225. Section 84 makes similar provision about a statutory aggravation which applies in cases where a public official, acting or purporting to act in the course of official duties, commits a people trafficking offence.

Section 85 – Expressions in sections 83 and 84

226. Section 85(1) defines people trafficking offences for the purpose of sections 83 and 84. Subsection (2) defines those to be considered as a public official for the purposes of section 84 while subsection (3) defines the term “an international organisation”.

227. Subsection (4) enables the Scottish Ministers to modify by regulations the offences considered to be people trafficking offences, the definition of who is a public official and the definition of an international organisation.

Use of live television link

Section 86 – Use of live television link

228. Subsection (1) of section 86 inserts sections 288H to 288K into the Criminal Procedure (Scotland) Act 1995. The new sections (discussed in greater detail in the following paragraphs) make provision for the participation of detained persons in hearings by means of live television link from the place of detention.

229. Subsection (2) repeals enactments in consequence of the new sections of the 1995 Act inserted by subsection (1). Specifically, paragraph (a) repeals section 117(6) of the 1995 Act, which requires an appellant in an appeal from solemn proceedings to appear before the court in ordinary civilian clothes. Paragraph (b) repeals section 80 of the Criminal Justice (Scotland) Act 2003, which allowed certain court appearances to be conducted by means of live television link and is rendered obsolete by the wider reaching new sections inserted by section 86 of the Bill.

Inserted section 288H – Participation through live television link

230. Subsection (1) requires a detained person to participate in a “specified hearing” (defined by inserted section 288J) by means of live TV link where the court has determined that the hearing should proceed in that manner. Before so determining, subsection (2) requires the court to give the parties an opportunity to make representations on the use of the TV link in the hearing. The court can only allow the hearing to proceed by TV link if satisfied that it is not contrary to the interests of justice to do so.

231. Subsection (3) gives the court the power to require a detained person to appear by TV link from the place where the person is in custody at an ad hoc hearing for the sole purpose of considering whether to make a determination on the use of TV links.

232. Where a detained person participates in a hearing by means of a TV link, the effect of subsection (4) is that the place of detention is deemed part of the court room, so that the hearing is deemed to take place in the presence of the detained person.
Inserted section 288I – Evidence and personal appearance

233. Subsection (1) precludes evidence as to the charge against the detained person being led at a hearing in which the detained person is participating by means of a TV link. It would therefore not be possible for a trial to proceed with the accused participating by TV link.

234. Subsection (2) gives the court the power to revoke, before or during a hearing, a determination (under section 288H(1)) that the accused is to participate at the hearing by TV link. Subsection (2)(b) requires that the court exercise the power to revoke the determination if it considers that it is in the interests of justice for the detained person to appear in person. For example, a problem with the technology arises unexpectedly and the court is not satisfied that it can clearly see or hear the detained person.

235. Subsection (3), read in conjunction with subsection (4), allows the court to postpone a hearing to the next day which is not a Saturday, Sunday or court holiday, if it decides either to revoke a determination under section 288H(1) or not to make a determination on the day a specified hearing takes place or is due to take place. Such a postponement does not count towards any statutory time limits applicable in the case, such as the time limits for detaining a person in custody pending a first diet or preliminary hearing. However, by virtue of subsection (5), the power cannot be used to postpone a hearing in which a person makes their first appearance from police custody.

Inserted section 288J – Specified hearings

236. Subsection (1) confers on the Lord Justice General the function of specifying the categories of hearings, such as the first appearance, at which a detained person may participate by live television link. Hearings may be specified by reference to the venues at which hearings take place (subsection (2)(a)), particular places of detention (subsection (2)(b)), or the types of cases or proceedings in which TV links can be used (subsection (2)(c)). Under subsection (3)(a) the Lord Justice General can vary or revoke any earlier directions and make different provision for different purposes (subsection (3)(b)).

Inserted section 288K – Defined terms

237. This section defines certain terms used within sections 288H to 288J. The expression “detained person” is defined so that the person imprisoned or lawfully detained at a location in Scotland. The concept of lawful detention is a broad one, it includes detention at a police station pending first appearance at court, detention in hospital by virtue of an assessment order or a treatment order imposed under the 1995 Act, detention in hospital under the Mental Health (Care and Treatment) (Scotland) Act 2003, or a young person’s detention in local authority secure accommodation.

Chapter 2 – Police Negotiating Board for Scotland

Section 87 – Establishment and functions

238. Section 87 inserts a new Chapter 8A into the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”) to provide for a Police Negotiating Board for Scotland (PNBS). New section 55A provides for the Board to be established, and introduces a new schedule 2A to make further
These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 20 June 2013

provision about it. New schedule 2A is set out in schedule 3 to the Bill (see paragraphs 248 and 249 for further discussion).

239. New section 55B provides that the PNBS may make representations to the Scottish Ministers about pay, allowances and expenses, public holidays and leave, the issue, use and return of police clothing and equipment, and hours of duty, in relation to constables (other than special constables) and cadets. Such representations may be made about draft regulations or determinations on these issues, or generally. The Scottish Ministers may, after consultation with the chairperson, require the PNBS to make representations about these matters within a set time period.

240. New section 55C provides that the PNBS may also make representations to the Scottish Ministers about other matters relating to the governance, administration and conditions of service of constables (other than special constables) and police cadets including draft regulations on such matters. New section 55D requires the PNBS to produce an annual report on how it has carried out its functions. The annual report is to be given to the Scottish Ministers and published.

241. Subsection (2) amends section 54 of the 2012 Act to require the Scottish Ministers to consult the PNBS before making regulations about the matters mentioned in new section 55B(4).

Schedule 1 – Modifications in connection with Part 1

242. Schedule 1 makes amendments to existing legislation as a consequence of specific elements of the Bill. Part 1 makes provision for the repeal of various enactments conferring a power to arrest without warrant, which are affected by the new power of arrest for the police set out in section 1 of the Bill. Part 2 makes provision for the repeal of enactments affected by the new arrangements for police custody and access to legal advice set out in Part 1 of the Bill.

Schedule 2 – Modifications in connection with Part 2

243. Schedule 2 makes transitional and consequential provision arising from section 57, which abolishes the requirement for corroborator.

244. Paragraphs 1 and 2 make transitional provision in respect of the people trafficking aggravations provided for in sections 83 and 84. The effect is that even before section 57 comes into force and abolishes the requirement for corroborative evidence at large, corroborative evidence will not be required to prove an aggravation under either section.

245. Paragraphs 3 and 4 provide that the removal of the requirement for corroborator in criminal proceedings by section 57, will also apply to sheriff court proceedings under section 68(3) of the Children (Scotland) Act 1995, to determine whether offence grounds for a referral to a children’s hearing have been established. This is a transitional provision. The Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”) will repeal section 68(3) but some proceedings under the section may continue as part of the transitional arrangements for the 2011 Act. Once all proceedings under section 68(3) are concluded, paragraphs 3 and 4 of the schedule will cease to apply.
246. Paragraph 21 inserts a new subsection into section 102 of the Children’s Hearings (Scotland) Act 2011 providing that section 57, which abolishes the requirement for corroborative evidence in criminal proceedings, applies where an application is made to a sheriff to determine whether offence grounds for referral to a children’s hearing under section 67(2)(j) of the 2011 Act are established.

247. Paragraphs 5 to 20 and 22 to 24 make provision in consequence of section 57. Certain statutory exceptions to the requirement for corroborative evidence presently exist. Once section 57 abolishes the requirement for corroborative evidence in criminal proceedings generally, the specific exceptions will be redundant. Part 2 of the schedule therefore removes from the statute book the existing exceptions to the general requirement for corroborative evidence.

Schedule 3 – Police Negotiating Board for Scotland

248. Schedule 3 inserts schedule 2A into the Police and Fire Reform (Scotland) Act 2012. Paragraph 1 establishes that the PNBS is not a Crown servant and has no Crown status, immunity or privilege. Paragraph 2 sets out the membership of the PNBS. It is to consist of a chair and deputy chair appointed by the Scottish Ministers, and other persons representing the Scottish Ministers, the Scottish Police Authority, the chief constable, constables (other than special constables) and police cadets. Under paragraph 3, MPs, MSPs, MEPs, government Ministers and civil servants will be disqualified from being the chair or deputy chair of the PNBS to ensure that the chair and deputy chair are independent.

249. Paragraph 4 provides that the Scottish Ministers are to prepare the constitution for the PNBS, after consulting the other persons to be represented on it. They must keep the constitution under review and may from time to time revise it. This paragraph also sets out what the constitution may include. It must regulate the procedure by which the PNBS reaches agreement on representations to the Scottish Ministers under new section 55B(1), and may require agreement to be reached by arbitration in specified circumstances. Paragraph 5 provides that the Scottish Ministers may pay remuneration to the chair and deputy chair of the PNBS, and expenses to its members. They must also pay such expenses as are necessary to enable the PNBS to carry out its functions.
FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Criminal Justice (Scotland) Bill introduced in the Scottish Parliament on 20 June 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The Policy Memorandum, which is published separately, explains in detail the background to the Criminal Justice (Scotland) Bill and the policy intention behind the Bill. The purpose of this Financial Memorandum is to set out the costs associated with the measures introduced by the Bill, and as such it should be read in conjunction with the Bill and the other accompanying documents.

3. The Bill has been developed around three elements:
   - Implementation of the recommendations of Lord Carloway’s review of the criminal justice system as a package of reforms;
   - Implementation of the recommendations of Sheriff Principal Bowen’s Independent Review of Sheriff and Jury Procedure; and
   - A number of miscellaneous provisions.

4. This Financial Memorandum is structured around these three elements, but this does not translate directly to the structure of the Bill’s provisions. Table 1 below sets out the grouping of provisions used in the Financial Memorandum and how that relates to the sections of the Bill. The table also provides an index to where the provisions are covered in this Memorandum.

Table 1: cross-references to Bill sections and index to paragraph numbers

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<td>315-318</td>
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5. Tables 2-5, providing an overall summary of the financial impact of the Bill, can be found after paragraph 11.

6. The estimates of costs contained in this memorandum are compiled from information provided by those bodies affected by the Bill. The figures and projections provided are the best estimates available for the costs and income that will be generated as a result of the provisions of this Bill. All costs have been rounded to the nearest £1,000. Figures may not sum due to rounding.

7. This financial memorandum assumes that the Bill provisions will take effect in the financial year 2015-16.
OVERVIEW

8. The Bill will have financial implications for a number of bodies. It will primarily affect the Scottish Police Authority (“SPA”), the Crown Office and Procurator Fiscal Service (“COPFS”), the Scottish Legal Aid Board (“SLAB”), the Scottish Court Service (“SCS”), and the Scottish Prison Service (“SPS”).

9. The measures which will have the greatest financial implications are connected with the Carloway provisions, particularly:
   - The removal of the requirement for corroboration; and
   - The provisions on access to legal advice.

10. The Bowen and miscellaneous provisions on the whole have lower financial costs.

11. The tables below summarise the costs of the Bill, differentiating between financial and opportunity costs. Many of the impacts of the Bill take the form of administrative burdens resulting from increased volumes of procedures currently undertaken and the introduction of additional procedures to meet the requirements of the Bill. Where a cost has been established based on additional staff time required to perform a particular new task, or to deal with an increase in case numbers, the Scottish Government anticipates that that this will likely be dealt with through measures such as full use of existing resources, prioritisation of functions, and increased operational efficiency. These are classified as opportunity costs. Only where a specific need for additional staff has been identified, has the cost been identified as an additional financial cost. There are also some one-off capital costs associated with the Bill, for example around the police custody estate.

Table 2: total financial costs by organisation

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These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 20 June 2013

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Table 3: total opportunity costs by organisation

<table>
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<tr>
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<th>2015-16</th>
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<th>2017-18</th>
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<tr>
<td></td>
<td>Recurring costs £’000</td>
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<td>Recurring costs £’000</td>
<td>Non-recurring costs £’000</td>
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<td>Local authorities [paras 227-237, 267-268, 309]</td>
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<td>1,244</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>18,848</strong></td>
<td><strong>11,116</strong></td>
<td><strong>26,598</strong></td>
<td><strong>87</strong></td>
</tr>
<tr>
<td><strong>Total opportunity cost</strong></td>
<td><strong>29,964</strong></td>
<td><strong>26,685</strong></td>
<td><strong>30,735</strong></td>
<td><strong>34,748</strong></td>
</tr>
</tbody>
</table>
These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 20 June 2013

Table 4: total financial costs by Bill provision

<table>
<thead>
<tr>
<th></th>
<th>2015-16 Recurring costs £'000</th>
<th>2015-16 Non-recurring costs £'000</th>
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<th>2016-17 Non-recurring costs £'000</th>
<th>2017-18 Recurring costs £'000</th>
<th>2017-18 Non-recurring costs £'000</th>
<th>2018-19 Recurring costs £'000</th>
<th>2018-19 Non-recurring costs £'000</th>
</tr>
</thead>
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<tr>
<td>Arrest &amp; detention, period of custody</td>
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<td>0</td>
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</tr>
<tr>
<td>Liberation from police custody</td>
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<td>Legal advice</td>
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<tr>
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<tr>
<td>Exculpatory and mixed statements</td>
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<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Finality and certainty</td>
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<td>Bowen provisions</td>
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<td>0</td>
<td>87</td>
<td>0</td>
<td>87</td>
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<tr>
<td>Maximum term for weapons offences</td>
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<td>0</td>
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<td>Method of juror citation</td>
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<td>Sentencing on early release</td>
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<td>People trafficking</td>
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<td><strong>6,587</strong></td>
<td><strong>6,587</strong></td>
<td><strong>6,587</strong></td>
<td><strong>6,587</strong></td>
<td><strong>6,587</strong></td>
</tr>
</tbody>
</table>

8 Although there are costs associated with establishing a Police Negotiating Board for Scotland, these are balanced by equivalent savings from discontinuing contributions to the existing Police Negotiating Board.
These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 20 June 2013

### Table 5: total opportunity costs by Bill provision

<table>
<thead>
<tr>
<th></th>
<th>2015-16 Recurring costs £’000</th>
<th>2015-16 Non-recurring costs £’000</th>
<th>2016-17 Recurring costs £’000</th>
<th>2016-17 Non-recurring costs £’000</th>
<th>2017-18 Recurring costs £’000</th>
<th>2017-18 Non-recurring costs £’000</th>
<th>2018-19 Recurring costs £’000</th>
<th>2018-19 Non-recurring costs £’000</th>
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<tr>
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<td>Exculpatory and mixed statements</td>
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<td>Carloway general</td>
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<td>11,116</td>
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<tr>
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<td>Sentencing on early release</td>
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<td>People trafficking</td>
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<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>18,848</strong></td>
<td><strong>11,116</strong></td>
<td><strong>26,598</strong></td>
<td><strong>87</strong></td>
<td><strong>30,648</strong></td>
<td><strong>87</strong></td>
<td><strong>34,748</strong></td>
<td><strong>0</strong></td>
</tr>
<tr>
<td><strong>Total opportunity cost</strong></td>
<td><strong>29,964</strong></td>
<td></td>
<td><strong>26,685</strong></td>
<td></td>
<td><strong>30,735</strong></td>
<td></td>
<td><strong>34,748</strong></td>
<td></td>
</tr>
</tbody>
</table>

**IMPACT**

12. Any rise in the overall running costs of relevant organisations will be reviewed as part of the overall planning of the Justice budget.

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<sup>9</sup> Although there are costs associated with establishing a Police Negotiating Board for Scotland, these are balanced by equivalent savings from discontinuing contributions to the existing Police Negotiating Board.
13. The opportunity costs associated with the Bill will be for the affected organisation to manage through measures such as full use of existing resources, prioritisation of functions, and increased operational efficiency.

14. A total of £5,549,000 has been identified as recurring opportunity costs for SPA. This is as a result of new processes including investigative liberation and post-charge questioning, as well as increases in case numbers from the removal of the requirement for corroboration.

15. There is also a large one-off opportunity cost of £9,848,000 for SPA. This comprises staff time to attend training on the revised procedures provided for in the Bill. The impact of this should be minimised by ensuring the Bill’s provisions are implemented in 2015, when the Commonwealth Games and other major events of 2014 are over, and the normal police training regime resumes.

16. A total of £3,842,000 has been identified as recurring opportunity costs for COPFS. Some of this is from the new processes around challenging of special conditions for liberation from police custody, but the greater part is from the projected increase in cases as a result of the removal of the requirement for corroboration.

17. A total of £1,363,000 has been identified as recurring opportunity costs for SCS, as a result of additional court time for new processes and volume increases. It is anticipated that these will be managed within the available court time. Expected savings in court time from the Bowen provisions have already been applied to this figure.

18. A total of £22,750,000 has been identified as recurring opportunity costs for SPS, as a result of increased prison places, primarily from the removal of the requirement for corroboration. This increase will not take full effect immediately, but will gradually increase up to this level over four to five years. SPS has indicated that additional prison places can be accommodated within existing capacity, but that long term increases may accelerate the rate that the flexibility in the system is used up. This will be kept under review.

19. A total of £1,244,000 has been identified as recurring opportunity costs for local authorities, as a result of increases in community sentences, and provision of social worker support to a minority of 16 and 17 year old suspects. It is anticipated that this will be managed within existing resources.

PART A – CARLOWAY PROVISIONS

OUTLINE OF MEASURES

Measures with cost implications

20. Those measures which will have definite financial or opportunity cost implications are outlined below.
Arrest and detention, period of custody

21. The changes in the Bill to periods of custody include the requirement for a police review at or about six hours after detention and that this review should be carried out by an officer of at least the rank of inspector not directly involved in the investigation. This will have implications for the police in terms of staff time.

Liberation from police custody

22. The Bill introduces a new process of investigative liberation from police custody. This will have resource implications for the police in terms of staff time to consider and authorise liberations where conditions are applied, as well as increased numbers of returning prisoners, and increases to persons breaching conditions of undertakings.

23. There are also potential cost implications for COPFS, SLAB and SCS from the application of special conditions to bail, and associated court hearings for challenges to these conditions. This includes additional IT costs for SCS.

Legal advice

24. The Bill extends the right to legal advice to suspects detained by the police, regardless of whether questioning takes place. This will likely lead to an increase in requests for legal advice, and this will have cost implications for SLAB, as well as for the police in administering access to solicitors.

25. In addition, Police Scotland has identified a need for modifications to the custody estate. These are in line with what was identified at the point of the Criminal Procedure (Legal Assistance, Detention and Appeals (Scotland) Act 2010. These costs will be phased over two years.

26. There will also be minor one-off costs for police in the production of aide memoire cards for the revised common law caution and for the production of a letter of rights for suspects.

Questioning

27. The Bill provides for the possibility of police questioning after charge, following police or Crown application to a sheriff for permission. COPFS advise that post-charge questioning is likely to be a rare occurrence. Where it occurs, it will have cost implications for SPA, COPFS, SLAB and SCS.

Child suspects

28. In giving effect to Carloway’s recommendations on child suspects, the Bill makes provision for a number of changes to the manner in which children and young people are treated in the criminal justice system with regard to the arrest, detention, interview and being charged. For the most part these changes are part of wider changes to criminal procedure which will require operational change, but of particular relevance are Carloway’s recommendations that:

- For the purposes of arrest, detention and questioning, a child should be defined as anyone under the age of 18 years. This means that the current provisions concerning notification
to an adult reasonably named by the person and these persons having access to a child suspect should be extended to all persons under 18 years of age; and

- All children should have the right of access to an adult reasonably named by the child if detained and, in any event, in advance of and during any interview, provided that access can be achieved within a reasonable time.

29. The Scottish Government anticipates that there will be an impact for the police by way of additional time spent finding, waiting for and accommodating parental or similar support and/or legal support for 16 and 17 year olds wishing it. However, Police Scotland has indicated that this can be achieved through the Whole System Approach already underway, and that no significant additional costs are anticipated.

30. The Bill’s provisions on child suspects could bring new costs for local authorities, as a result of increased provision of social worker support for 16 and 17 year old suspects, in cases where this is not provided by a parent, family member or friend.

**Corroboration and sufficiency of evidence**

31. The Bill removes the current requirement for corroboration in criminal cases. Lord Carloway commented in evidence to the Justice Committee on 29 November 2011\(^\text{10}\) that he did not think that the total number of prosecutions would necessarily increase as a result of this change.

32. However, shadow reporting and shadow marking exercises carried out by Police Scotland and COPFS suggest that there are likely to be increases in the number of cases reported by the Police to COPFS, and in the number of cases prosecuted by COPFS. The potential scale of increase is as follows:

- Police – increase in police reports to COPFS in the range 1.5%-2.2%, with a most likely estimate of 1.5%.

- COPFS – change in summary prosecutions in the range of a 1% decrease to a 4% increase, with a best estimate of a 1% increase; and increase in solemn prosecutions in the range of 2-10% increase, with a best estimate of a 6% increase.

33. Taken together, and assuming that the effects are cumulative (i.e. an increase in police reports feeds directly into additional prosecutions, with changed marking procedures within COPFS applying on top of this impact), suggests potential increases in the number of prosecutions as per the table below. Relatively small sample sizes were used in analysis of the potential impact of removing the requirement for corroboration. This means that the confidence interval between which the impacts could lie – presented as low and high estimates in the table – is very large. However it is extremely unlikely that impacts at the high end of the scale would be seen.

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Table 6: potential % increase in the number of prosecutions

<table>
<thead>
<tr>
<th></th>
<th>Low estimate</th>
<th>Best estimate</th>
<th>High estimate</th>
</tr>
</thead>
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<tr>
<td>Summary prosecutions</td>
<td>0.5%</td>
<td>2.5%</td>
<td>6.3%</td>
</tr>
<tr>
<td>Solemn prosecutions</td>
<td>3.5%</td>
<td>7.6%</td>
<td>12.4%</td>
</tr>
</tbody>
</table>

34. An increase in prosecutions would have potential cost implications for SPA, COPFS, SLAB and SCS in terms of increased workload. An increase in prosecutions will also have impacts on the SPS and local authorities on the basis that additional prosecutions are likely to lead to additional convictions and additional custodial and community sentences. The number of criminal reports received by COPFS, and of summary and solemn prosecutions, vary significantly between years. In recent years there has been a significant downward trend in recorded crime, reports to COPFS and both summary and solemn court disposals (see Figures 1 and 2 below). This Financial Memorandum includes estimated costs associated with the increases indicated by the shadow marking exercises from a current baseline. However, the context for these increases is the overall scale in the reduction in criminal prosecutions over recent years.


Source: [http://www.copfs.gov.uk/About/corporate-info/Caseproclast5](http://www.copfs.gov.uk/About/corporate-info/Caseproclast5)
These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 20 June 2013

Figure 2: Court Disposals 2007-12

Source: http://www.copfs.gov.uk/About/corporate-info/Caseproclast5

35. With regard to the removal of the requirement for corroboration in relation to Children’s Hearings court proceedings, the Scottish Government anticipates no significant financial implications for the Scottish Government, Scottish Children’s Reporter Administration (“SCRA”), COPFS, SCS, local authorities or others.

Carloway provisions in general

36. In addition to the costs identified above, there will be one-off costs for police and COPFS to provide training for the changes in the Bill relating to Lord Carloway’s recommendations. Additional IT requirements for the police will be implemented as part of the wider IT police programme.

37. COPFS anticipate a short-term increase in the number of appeals during the three years following the commencement of the Bill.

Measures with no or marginal costs

Appeal procedures

38. The Bill makes changes to appeal procedures to encourage more timeous progression of appeals and to eliminate duplication of procedures. The intention is to avoid unnecessary delay, in accordance with the requirements of the European Convention on Human Rights. Reduced numbers of late appeals would lead to a slight saving for SLAB.

Vulnerable adult suspects

39. The provisions in the Bill relating to vulnerable adult suspects will not entail additional costs to local authorities and police as Appropriate Adult Services are provided at present on a non-statutory basis.
These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 20 June 2013

Exculpatory and mixed statements
40. The Bill amends the restrictions relating to admissibility of statements made by an accused person. The provisions relating to exculpatory and mixed statements are not anticipated to have any cost implications.

Finality and certainty
41. The Scottish Government does not anticipate there will be any additional costs associated with the provision that adjusts how the Appeal Court considers cases referred by the Scottish Criminal Cases Review Commission (“the SCCRC”).

Jury majorities
42. The Bill’s provisions relating to jury majorities required for conviction are not expected to have any additional costs.

COSTS ON THE SCOTTISH ADMINISTRATION
43. Costs on the Scottish Administration will fall on the Scottish Government, SPA, COPFS, SCS, SPS and the Legal Aid Fund. These are set out separately below. Total non-recurring financial costs on the Scottish Administration will be around £4,352,000 over two years, and there will be total recurring financial savings of £6,530,000 per year.

COSTS ON THE SCOTTISH GOVERNMENT
44. The Scottish Government does not expect any of the Bill’s provisions to have cost implications for the Scottish Government.

SCOTTISH POLICE AUTHORITY
45. The police will be affected by a number of measures in the Bill, set out below. This is based on estimates provided by Police Scotland.

46. This financial memorandum has been developed during the transition to the new police body Police Scotland. Throughout this document there are references to SPA as the body with financial authority. All police costs identified in this document are attributed to SPA. The development of these estimates has been undertaken using information provided by Police Scotland. There are also references to the Association of Chief Police Officers in Scotland (“ACPOS”), primarily relating to historic research.

Measures with cost implications

Period of custody: statutory review of police detentions
47. The Bill provides for police review of any period of detention before charge at or about six hours after detention and that such a review should be carried out by an officer of at least the rank of inspector who has not been directly involved in the investigation.
48. Due to the limitations of the prisoner management information technology systems being used by forces at present, it is not possible to provide accurate contemporary statistics for suspect detention rates; the basis for assessing the financial impact of this measure therefore is previous research with figures amended to account for recent, more general prisoner holding trends.

49. In establishing an estimate, Police Scotland has looked at the number of suspects detained by way of section 14 of the Criminal Procedure (Scotland) Act 1995, on the basis that these are the detainees currently subject to time limits for detention. Previously published ACPOS research, the Solicitor Access Data Report 2011, suggests that suspects detained by way of section 14 accounted for 79.3% of the 20% of the prisoner population who had the right to solicitor access. This suggests that approximately 15.9% of the prisoner population is detained under section 14. During 2011-12 forces dealt with a total of 204,400 prisoners. If the ratios found during the research are applied to this figure, the number of suspects coming into police premises who would be detained for investigative purposes may be assumed to be in the region of 32,400 per annum or around 90 per day.

50. The findings of this research indicated that only 16.5% of detentions exceeded six hours. Police Scotland has indicated that in order to complete a review at or around six hours it is likely that the review process will often commence earlier than the six hour point. As such, it has assessed that custody reviews may occur in around 20% of all (detention) cases, 6,480 occasions per annum.

51. The introduction of Investigative Liberation may lead to a reduction in the number of persons detained for 6 hours or more. This is considered in more detail at paragraphs 57-59. The Scottish Government anticipates that 10% of detainees would be considered for investigative liberations, so the number of reviews is reduced to 5,830. See table below for summary.

**Table 7: estimated numbers of prisoners relevant for six hour review**

<table>
<thead>
<tr>
<th>Description</th>
<th>Total</th>
<th>Perce</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total prisoners</td>
<td>204,400</td>
<td></td>
</tr>
<tr>
<td>Prisoners with a right to solicitor access</td>
<td>20% of 204,400</td>
<td>40,880</td>
</tr>
<tr>
<td>Prisoners detained under section 14 with a right to solicitor access</td>
<td>79.3% of 40,880</td>
<td>32,400</td>
</tr>
<tr>
<td>Prisoners detained under section 14 with a right to solicitor access still</td>
<td>20% of 32,400</td>
<td>6,480</td>
</tr>
<tr>
<td>detained at six hour point</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prisoners detained under section 14 with a right to solicitor access still</td>
<td>90% of 6,480</td>
<td>5,832</td>
</tr>
<tr>
<td>detained at six hour point not eligible for new investigative liberation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>procedures</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
52. There are a number of variables that could impact on the length of time needed to carry out a custody review, including the ready availability of information, enquiry officer(s) and the custody review officer. Police Scotland suggest an average transaction time of 30 minutes per review, giving notional costs of £99,000.

\[
5,832 \text{ inspector reviews} \times 30 \text{ minutes} \times £33.86 \text{ per hour} = £99,000
\]

53. These figures are based on the premise that an inspector need not be physically present to carry out a review.

54. This estimate is based on the hourly costs associated with an inspector’s time. This does not translate directly into additional financial cost, but will become part of inspectors’ general workloads. This £99,000 is therefore classed as an opportunity cost.

**Liberation from police custody – investigative liberation**

55. The Bill will give the police the express power to liberate a suspect from detention, prior to charge/report, subject to any appropriate conditions necessary for carrying out further investigations.

56. Around 80% of persons coming in to police custody do so on the basis of there being a sufficiency of evidence to arrest without questioning. The number of persons eligible for investigative liberation is anticipated to be broadly similar to the numbers currently being dealt with in terms of section 14 of the Criminal Procedure (Scotland) Act 1995. As explained in paragraph 49, the number of prisoners detained under section 14 and with a right to solicitor access is estimated at 32,400 per annum or around 90 per day.

57. Previous ACPOS research\(^1\) suggests that the average detention time is just under four hours and almost 84% of detentions are concluded at six hours or less. Less than one per cent exceeded twelve hours.

58. A significant proportion of detainees can be under the influence of drink and/or drugs and therefore not fit for interview, or have additional welfare needs that require medical assessment or attention. These factors impact on the police’s ability to interview suspects but also impact on the appropriateness of such individuals being quickly liberated from custody to return at a later date for questioning. There will also be cases where the nature of the crime(s) under investigation and the threat the suspect would pose to victims, witnesses or the community in general is such that they could not be liberated prior to the conclusion of the investigation.

59. Police Scotland therefore estimates the proportion of detainees that would be considered for investigative liberation at around 10%. This would equate to around 3,240 persons per annum being released on investigative liberation.

60. The police would then have the option of whether or not to place conditions on the suspect. Police Scotland estimates that around 16% of individuals released from police custody on undertakings are subject to special bail conditions. However, given the circumstances likely

\(^{11}\)http://www.acpos.co.uk/Documents/News%20Releases/SolicitorAccessDataReport.pdf
to be prevailing at the investigative liberation stage, where the threat to the criminal justice process is arguably greater, Police Scotland suggest that the proportion of suspects that will be placed on conditions would greatly exceed the levels seen at undertaking: possibly around half of the estimated 3,240 cases that will occur over a twelve month period.

61. Application of conditions is likely to be done at the inspector level. Police Scotland estimate that the process would take somewhere in the region of 30 minutes per case:

62. Application of special conditions to investigative liberations:

   \[1620 \text{ suspects} \times 30 \text{ minutes} \times £33.86 \text{ per hour} = £27,000\]

63. Such decisions would be appealable on application to a sheriff. Given the likely role of Procurator Fiscal in that appeals process, there would be a requirement for the police to provide COPFS with a report in these cases. COPFS has estimated 425 cases per annum. It may be possible that the ‘decision log’ used by the officer imposing the conditions could be used as the basis for this report, in which case there would be little additional demands on the police. Otherwise an officer would need to formulate a report.

64. There will be a number of suspects who will not comply with their conditions bringing increased workload and cost to the police in terms of crime recording, investigation, arrest/report and potential appearance from custody. There is also the likelihood that on some occasions details of the investigative liberation may need to be altered to accommodate unforeseen circumstances, either on the part of the investigating officers or suspect. This will inevitably involve officer/staff time. The impact of this should be low given the small numbers.

65. It is likely that there will be an additional increase in prisoner throughput due to those released on investigative liberation being re-arrested as a result of them having committed offences. It is not possible to accurately estimate what the level of offending will be but if it were to be 20%, this would translate to an additional 324 prisoners of whom a proportion would be kept in custody (particularly where the offence related to threats or attacks upon victims or witnesses in the original case under investigation). Given the likely spread of further detention times from a few hours to more than a day (weekend detentions), even if only the minimum additional cost of £180 is applied to each of these prisoners this would result in a further increase in costs:

   \[324 \text{ person breaching conditions of undertaking} \times £180 \text{ per detention} = £58,000\]

66. To ensure the rights and welfare needs of the suspect are recognised and met there will be a need to formally ‘process’ suspects when they return. This will involve the usual search and risk assessment in order to draft a suitable care plan. It will also include a formal offer and/or reminder of legal rights. A proportion of returning suspects are likely to require the services of an interpreter or appropriate adult or in some cases a consultation with a medical practitioner to establish whether or not they are fit for interview. Police Scotland has given an average processing cost of £180 per arrival.

   \[3,240 \text{ prisoners} \times £180 \text{ per detention} = £583,000\]
67. The table below summarises the potential costs identified by Police Scotland associated with investigative liberation.

Table 8 – Potential police costs associated with investigative liberation

<table>
<thead>
<tr>
<th>Cost Description</th>
<th>Cost £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inspector level authorisation of investigative liberations and application of conditions</td>
<td>27,000</td>
</tr>
<tr>
<td>Additional work associated with people breaching conditions of investigative liberation</td>
<td>58,000</td>
</tr>
<tr>
<td>Processing of prisoners returning from investigative liberation</td>
<td>583,000</td>
</tr>
<tr>
<td>Total</td>
<td>669,000</td>
</tr>
</tbody>
</table>

68. These projections do not consider any costs associated with the notification of amendments to or cancellation of liberation dates. This will likely be achieved via telephone or e-mail and supported by a formal written notice. The Scottish Government anticipates that these costs would be marginal.

69. This estimate is based on the hourly costs associated with an inspector’s time. This does not translate directly into additional financial cost, but will be part of inspectors’ general workloads. This £669,000 is therefore classed as an opportunity cost.

Liberation from police custody – presumption to liberty

70. The Bill provides that when the police do not intend to recommend opposition to bail at a court hearing, the suspect should be released, either unconditionally or on an undertaking, to appear at court on a specified future date.

71. During the year 2011-12 Scottish police forces dealt with over 204,000 prisoners. SCS advise that during that same year 54,036 persons appeared in court on a new charge. It is only this group that will be impacted upon by the presumption to liberty and an expanded regime of undertaking.

72. Police Scotland estimates that the Bill’s provisions on presumption to liberty may result in a decrease of between 10% and 20% in the numbers of prisoners appearing from custody – between 5,400 and 10,800 prisoners.

73. Police Scotland advises that, given the nature of how costs are accrued in this area, the savings to the police from this reduction would be insignificant – detainees would have already been received in custody, may have required medical assessment and been given blankets,
bedding, food, etc. It is likely that all of these releases would entail the application of special conditions, which requires the authority of an inspector, taking an average of 30 minutes per case.

\[
5,420 \text{ prisoner releases} \times 30 \text{ minutes} \times 1 \text{ inspector } @ £33.86 \text{ per hour} = £92,000
\]

\[
10,840 \text{ prisoner releases} \times 30 \text{ minutes} \times 1 \text{ inspector } @ £33.86 \text{ per hour} = £184,000
\]

74. A mid-range estimate for this activity would be £138,000.

75. None of these projections includes any contingency in relation to ‘bail’ monitoring activity, whether as an additional role for frontline officers to undertake or, given potential the numbers involved through the creation of ‘Bail Managers’ as there are in some forces in England and Wales.

76. This estimate is based on the hourly costs associated with an inspector’s time. This does not translate directly into additional financial cost, but will be part of inspectors’ general workloads. This £138,000 is therefore classed as an opportunity cost.

Legal advice – facilitating access

77. The Bill implements Lord Carloway’s recommendation that legal access should be made available to all suspects, “regardless of questioning, as soon as practicable after… the detention of the arrested suspect at the police station”. Police Scotland has indicated that about 20% of those in police custody are currently offered access to legal advice.

78. During 2011-12 forces received a total of 204,200 prisoners. Using the 20% figure provided by Police Scotland suggests 40,840 of these would have been eligible for legal advice, leaving around 163,360 people who go through police stations and are not currently offered access to a solicitor, who will now have a right to this access.

79. Information provided by SLAB currently places the numbers of persons accessing legal advice in Scotland as being in the region of 60 per day or 21,900 per annum; this equates to a current acceptance rate of 53.6%.

80. In discussion with SLAB and other stakeholders the Scottish Government has concluded that the take-up rate for this group will likely be lower than for those who are questioned, on the basis that detainees being released without being questioned are less likely to seek legal advice. A likely range of 20% to 53.6% take-up rates for solicitor access for this non-interviewed group has been modelled, with a best estimate at 35% (see table 9 below). It should be noted that Police Scotland feels that take-up rates may be higher than this.

81. The format for legal advice will be a mix of telephone and in person. Currently around 15% of advice provided by SLAB is in person at the police station; the rest is provided through the Solicitor Contact Line. In England and Wales the ratio is markedly different – around 70% of those requesting legal advice see a legal advisor in person at a police station. However, as Lord
Carloway points out in his report12, the system in England and Wales is not directly comparable because private communication with a solicitor is interpreted to include an accredited representative of a solicitor (i.e. a paralegal), and the introduction of fixed fees has had an impact on the type of advice offered. A proportion of 30% of advice offered in person, with 70% by telephone, has been modelled based on discussions with SLAB and other stakeholders.

82. Additional access to solicitors will have implications for the police in terms of staff time to facilitate this, in terms of making contact with the solicitor, making arrangements for consultation, and escorting the detained person. Police Scotland has estimated that facilitating a solicitor visit would involve 30 minutes of staff time, while facilitating a telephone consultation would involve 15 minutes of staff time. Using a 30:70 split gives an average figure of 19.5 minutes, or 0.325 hours.

Table 9: costs for police from additional legal advice

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Number of additional cases where legal advice provided</th>
<th>Impact on police</th>
</tr>
</thead>
<tbody>
<tr>
<td>20% take-up for non-interviews</td>
<td>32,672</td>
<td>32,672 x 0.325 x £21.86 = £232,000</td>
</tr>
<tr>
<td>35% take-up for non-interviews</td>
<td>57,176</td>
<td>57,176 x 0.325 x £21.86 = £406,000</td>
</tr>
<tr>
<td>53.6% take-up for non-interviews</td>
<td>87,561</td>
<td>87,561 x 0.325 x £21.86 = £622,000</td>
</tr>
</tbody>
</table>

83. This gives a best estimate of £406,000 of additional police staff time involved in facilitating access to legal advice. This does not translate directly into additional financial cost, but will be part of inspectors’ general workloads. This has therefore been classed as an opportunity cost.

Legal advice – modifications to custody estate

84. There are currently limited facilities in existence to permit solicitors to consult confidentially with clients at police stations. Police Scotland anticipates that in order to facilitate the additional telephone and face to face consultations that might result from a right to legal access, additional interview accommodation may be required. Of the police premises in Scotland with custody holding facilities there are 42 which are identified as primary facilities and a further 55 are identified as secondary facilities. Primary facilities are resourced by designated staff from Custody Division and are where prisoners are kept prior to appearing at court. These are open on a 24/7 basis. Secondary facilities are opened on an ‘as and when necessary’ basis and are staffed by trained resources from Local Policing.

12Carloway Review Report and Recommendations paragraph 6.1.6
85. There is an ongoing process of rationalisation of the custody estate, and Police Scotland has considered the prospect of further redesignation of custody estate centres.

86. Police Scotland anticipates that in order to accommodate the volume of legal access interviews a total of 160 consultation rooms may be required.

87. The cost of providing interview facilities varies substantially between locations. In some instances additional interview room facilities may be achieved at relatively low cost, in the order of £5,000 per room. In other instances more extensive work may be required and costs may be £35,000 or higher, per room. An average cost per room of £20,000 has been assumed. This gives total financial costs of £3,200,000. It should be noted that this is a capital cost.

\[
160 \text{ interview rooms} \times £20,000 \text{ average cost} = £3,200,000
\]

88. Given the wide variety in individual costs per room, it is anticipated that this total capital cost could vary within a range of between £1,600,000 and £4,800,000.

89. Each interview room will also require fixed line telephone equipment to permit phone advice to be given to an accused by their solicitor during detention. Police Scotland advise that the cost per room will be in the order of £600.

\[
\text{Telephony associated with 160 interview rooms } @ £600 \text{ per room} = £96,000
\]

90. The costs for modifications to the custody estate are in line with what was identified at the point of the Criminal Procedure (Legal Assistance, Detention and Appeals (Scotland) Act 2010. Due to the scale of this work, it is assumed that it would be undertaken over a period of two years, with total capital costs of £1,648,000 per year. SPA is currently developing an estates strategy, and there is some financing carried over to SPA to implement upgrades to the custody estate.

Legal advice – letter of rights

91. The Bill states that every arrested and detained suspect should be provided with a copy of a “letter of rights” unless there are particular reasons not to do so.

92. Anticipated cost for the production of English language version of the Letter of Rights is £6,000 per annum for 200,000 copies of double sided A4 with two columns of print per page.

93. The costs for the development of non-English language versions will, primarily, be associated with the cost of translation services. Provisional estimates place the cost for translation into the ten most popular non-English languages at £2,000, as a one-off cost. Additional costs for desktop, ad hoc printing are unlikely to exceed £1,000 per annum.

94. Total estimated SPA costs for the letter of rights are therefore £7,000 per annum and £2,000 initial costs.
Questioning

95. The Bill will enable the police to seek judicial authority to question a suspect further after the point of charge or intimation of a report being sent to the Procurator Fiscal, but prior to the individual’s first appearance at court. Such a process could be used when new evidence emerges or other material becomes known, or where for good reason it was not possible to question the suspect properly prior to charge. The requirement to seek permission from the court to ask further questions provides an independent safeguard to this provision. The envisaged process would be akin to obtaining a warrant from a sheriff.

96. The Crown will also be entitled to make an application to the court for the police to be allowed to question an accused after his/her first appearance in court. Such an application can be made until the trial against the accused has commenced. This will also have implications for the police.

97. Lord Carloway does not recommend that this process should be restricted to solemn procedure only although he suggests that (at para 6.2.55), “no doubt a sheriff would be reluctant to grant permission in a summary case”. Accordingly, while an application in a summary case will be competent, it is assumed that the majority of applications will be in cases which are likely to be, or are being, prosecuted under solemn procedure. COPFS report in their annual case reporting analysis that, in 2011-2012, out of 101,606 cases disposed of in court, only 5% (5,132 cases) were by way of solemn proceedings.

98. There is the possibility that once an accused has appeared in court the police (via the procurator fiscal) or the Crown itself (seeking to allow a police officer to enquire on its behalf) will make requests to interview accused people, who may either be on bail or remanded in custody, about matters relating to DNA analysis results or associated with the examination of telephones or computers. Previously this type of questioning could only be conducted at court, in the course of a trial, with no opportunity to carry out investigations as a result of any answers. It is probable that all of these interviews would be carried out at police premises under tape recorded conditions. Persons would require to be given the right to consult with solicitors. There would also be the usual requirements regarding the assessment of prisoner welfare, etc.

99. This is a new procedure without precedent in Scotland, so it is difficult to establish concrete estimates for the frequency with which post-charge questioning will be used. COPFS and Police Scotland have provided estimates, based predominantly on professional judgement, and these vary significantly. Since COPFS will act as gatekeepers in the process, deciding which requests for post-charge questioning go forward to a Sheriff, the Scottish Government has used the COPFS estimates in its calculations.

100. COPFS has estimated that a total of around 200 instances of post-charge questioning might take place each year, of which 50 could be cases where the suspect is in custody before appearing in court the next day, 100 could be cases where the suspect has been released on undertaking or report, and 50 could be cases where the suspect has already appeared in court.

101. The cost of a suspect returning to police premises for questioning has been estimated by Police Scotland at £180, covering standard processing – details noted, checks and risk
assessment carried out, solicitor advice offered and arranged, with the potential for medical assessment/assistance, interpreters, etc.

200 persons detained for questioned after charge @ £180 per person = £36,000

102. Police Scotland has estimated the staff costs associated with a police interview at £580. This covers officer time for the application process, interview preparation, interview, and post interview procedures including the compilation of a report (including tape transcription) to the Procurator Fiscal.

200 persons interviewed @ £580 per interview = £116,000

103. These calculations exclude any costs associated with the pre-request / pre-interview analysis of the newly available evidence or its reporting to Crown as this work would already be undertaken in the normal course of a developing investigation.

Table 10: summary of projected police costs – questioning persons after charge

<table>
<thead>
<tr>
<th>Cost Description</th>
<th>Cost</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prisoner processing</td>
<td>36,000</td>
<td>200 persons</td>
</tr>
<tr>
<td>Interview related</td>
<td>116,000</td>
<td>200 persons</td>
</tr>
<tr>
<td>Total</td>
<td>£152,000</td>
<td>200 persons</td>
</tr>
</tbody>
</table>

104. This estimate is based primarily on hourly staff costs. This does not translate directly into additional financial cost, but will be part of inspectors’ general workloads. This £152,000 has therefore been classed as an opportunity cost.

Corroboration and sufficiency of evidence

105. In order to inform his Review, Lord Carloway commissioned COPFS to carry out an analysis of data already within its possession. This suggested that there was potential for 458 additional prosecutions per year.\(^\text{13}\) Lord Carloway outlined a number of caveats to these results and subsequently commented in his evidence to the Justice Committee on 29 November 2011\(^\text{14}\) that he did not expect the total number of prosecutions to increase.

106. However, analysis carried out by Police Scotland and COPFS suggests that there are likely to be increases in the number of cases reported by the Police to COPFS, and in the number of cases prosecuted by COPFS. This analysis was based on shadow marking exercises, i.e.

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\(^{13}\) This comprised 268 cases which had been put on petition but later marked “No Further Proceedings due to Insufficient Evidence”, and 190 cases received by the COPFS National Sexual Crimes Unit but had not resulted in an accused being placed on petition. In relation to the latter, the Carloway Review referred to 95 cases, but this was on the basis of a 6 month sample, thus implying 190 cases over a year.

re-evaluating a sample of previous cases to identify how many might have progressed differently under the new system.

107. COPFS provided Police Scotland with draft new guidance on the reporting of cases without corroboration. Police Scotland then conducted a shadow reporting exercise in consultation with COPFS. The focus was on ensuring, wherever possible, that there was supporting evidence in each case. The results of the exercise demonstrated that the range of increased number of cases would be between 1.5 and 2.2%, and most likely to be at the 1.5% level.

108. National case reporting indicates that in 2011-12, 242,404 Standard Prosecution Reports (“SPRs”) were completed, indicating a case referred from the police to COPFS. A 1.5% increase would equate to an additional 3,636 cases reported nationally over a twelve month period.

109. The costs of investigating and reporting a case to Crown Office vary depending upon the nature of the crime under investigation, complexity of the investigation, number of officers involved and ready availability of evidence. However, Police Scotland estimate that the cost of submitting a basic SPR is £59.86.

   Additional 3,636 case reported annually @ £59.86 per SPR= £218,000

110. This assumes that there will be no requirement to significantly change the format for reporting cases from the police to COPFS.

111. This calculation shows the estimated cost of an increase of 1.5% in police reporting. However, levels of reported crime have been falling for several years and are now at a near forty year low. See paragraph 34 for more detail. An increase of 1.5% is within natural annual variation.

112. This estimate is based on the staff time in completing an SPR. This does not translate directly into additional financial cost, but will be part of general staff workloads. This £218,000 has therefore been classed as an opportunity cost.

113. The removal of the requirement of corroboration is likely to result in additional cases being brought to court. Police Scotland has used the figures from police and COPFS shadow marking exercises (see paragraphs 150-153 for more detail on the COPFS exercise) to extrapolate an overall increase of 3.03% in the number of court proceedings to which the police would need to provide support.

114. Police Scotland has provided an estimate of the impact of this increase on overtime payments. Only those costs borne by Strathclyde Police were available in producing this estimate. In the last financial year, Strathclyde Police spent £2,323,000 on police witnesses attendance at court. It was previously reported that Strathclyde submitted 53.5% of SPRs across Scotland. Using the proportion of case reporting as a guide, this extrapolates to £4,343,000 nationally.
115. Given the above estimated increase in proceedings Police Scotland suggest that increases in cases proceeding to trial diet, and therefore witness costs, would be of a similar order. Therefore, court overtime payments could be anticipated to rise 3.03%, an increase of £132,000 to £4,474,000. Since this relates to overtime payments, this has been counted as a financial cost.

116. These costs do not recognise additional witness provision and associated costs where no direct court overtime is attributed.

117. Police Scotland also anticipates an increase in workloads associated with a COPFS marking decision to proceed. While it is possible to make an estimation of increased costs due to direct attendance at court using existing empirical evidence, it is much more difficult to make a definitive evaluation of the costs of additional work generated by COPFS making a marking decision to initiate criminal proceedings.

118. Routinely, the majority of additional work associated with summary cases prior to citation would tend to be the submission of witness statements. Average cases would use two to five witnesses. The time taken for submission would depend on original format and other factors, but Police Scotland has provided a broad estimate that for four witness statements, two officer hours would be required on average. If proceedings increased by 2,836 cases (based on the 1% increase indicated by the COPFS shadow marking exercise) that could see a potential increase in costs of £136,000 per annum.

\[2,836 \times 2 \text{ hours} \times £23.91 \text{ per hour} = £136,000\]

119. This estimate is based on the staff time involved. This does not translate directly into additional financial cost, but will be part of general staff workloads. This £136,000 has therefore been classed as an opportunity cost.

120. It is the increase in solemn work that has the potential to have a greater impact across the police service, but this is very difficult to quantify due to its diverse nature. On marking a solemn case, there will most likely be a further instruction to the reporting officer by COPFS to: submit essential statements immediately and the rest thereafter, proceed with forensic analysis, conduct identity parades, continue to trace witnesses, and obtain defence statements.

121. This list is far from exhaustive but demonstrates the nature of enquiries relating to solemn proceedings. Further, COPFS regularly tasks Precognition work to the police, a significant burden on investigation teams which has not been previously costed. In addition, any further enquiry work has a knock-on impact on other areas of business, for example case management and word processing.

122. Police Scotland has modelled typical staff costs directly associated with a solemn marking decision, which suggests an average cost of £3,789 per case.

123. Using the percentage increase indicated by the COPFS shadow marking exercise suggests an additional 953 cases, suggesting total police staff costs of £3,611,000 per annum.

\[953 \times £3,789 = £3,611,000\]
124. This estimate is based on the staff time involved. This does not translate directly into additional financial cost, but will be part of general staff workloads. This £3,611,000 has therefore been classed as an opportunity cost.

Carloway provisions in general – police training

125. Commencement and implementation of the Bill’s provisions relating to Lord Carloway’s recommendations will require training to be undertaken to ensure that relevant police personnel have a professional knowledge and understanding of the legislation and its associated impact on their day to day duties.

126. Police Scotland has estimated the requirement at two hours of e-learning followed by 16 hours of classroom learning for each officer. This can be achieved through reallocation of the officer from normal duties in most cases without the need for overtime payments, so staff time for attending training is treated as an opportunity cost.

127. The financial costs associated with the training for the remainder of the Bill’s provisions are estimated at £860,000, comprising:

- Development of e-learning package = £45,000
- Total travel, accommodation and refreshments costs for all training = £815,000.

128. The opportunity costs associated with the training for the remainder of the Bill’s provisions are estimated at £9,848,000, comprising:

- Total staff time for attending 18 hours of trainings = £8,437,000
- Course and briefing preparation by training sergeants = £10,000
- Staff costs for 3-hour briefing for senior staff = £60,000
- Training staff time for delivering training = £1,209,000
- ‘Train the trainers’ – development = £35,000
- ‘Train the trainers’ – delivery = £35,000
- Additional training resource in Edinburgh and Glasgow = £64,000.

Measures with no or marginal costs

Child Suspects

129. The Bill’s provisions for child suspects will have an impact for the police by way of additional time spent finding, waiting for and accommodating parental or similar support and/or legal support for 16 and 17 year olds wishing it. In preparing the Bill the Scottish Government worked closely with Police Scotland on the provisions relating to child suspects and as part of that Police Scotland performed a scoping exercise to identify the number of 16 and 17 year olds attending police offices across Scotland during financial year 2011-12.
These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 20 June 2013

Table 11: numbers of 16 and 17 year olds attending police offices

<table>
<thead>
<tr>
<th>Force Area</th>
<th>Aged 16 &amp; 17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern</td>
<td>757</td>
</tr>
<tr>
<td>Tayside</td>
<td>267</td>
</tr>
<tr>
<td>Fife</td>
<td>828</td>
</tr>
<tr>
<td>Central Scotland</td>
<td>177</td>
</tr>
<tr>
<td>Dumfries and Galloway</td>
<td>94</td>
</tr>
<tr>
<td>Lothian and Borders</td>
<td>1443</td>
</tr>
<tr>
<td>Grampian</td>
<td>402</td>
</tr>
<tr>
<td>Total</td>
<td>3968</td>
</tr>
</tbody>
</table>

130. Strathclyde were unable to provide numbers for this research but if they were taken to represent approximately the same again (based on the fact that approximately 50% of recorded crimes and offences in Scotland are recorded within the Strathclyde Police area) then a figure of 8,000 16 and 17 year olds attending police offices would be a reasonable total.

131. ACPOS, and now Police Scotland, have long been key partners in the roll-out of early and effective intervention (EEI) and the whole system approach to youth justice. The ethos of this approach promotes the diversion of young people away from formal measures and custody and in recent years. Nationally, since 2006-7 offence referrals to the children’s reporter have fallen by 66%, from 16,490 to 5,604 in 2011-12, with a 31% reduction from 2010-11 to 2011-12. Since 2008-9 the Policing Performance Framework has collected data on youth crime: the number of recorded crimes and offences committed by children and young people (8-17 year olds) decreased by 32% between 2008-09 and 2011-12. The number of children and young people (8-17) who committed crimes and offences decreased by 9% between 2010-11 and 2011-12 and fell 29% from 2008-9 to 2011-12. While the provisions in this Bill are not integral to the whole system approach they are consistent with a young-person-centred approach to youth justice which has seen substantial falls in the numbers of young people coming to the notice of police, requiring to be the subject of SPRs, and being taken to formal measures generally. As such, separating the savings associated with likely future falls in the number of young people being taken to police stations and interviewed from the costs of training, developing IT systems and additional waiting time from more general developments in policing practice would not be possible. Discussions with the Police suggest they would see these costs as intrinsic to the wider development of policing in Scotland and not attributable to this Bill.

Vulnerable adult suspects

132. The Bill provides a definition of a “vulnerable suspect” and puts in place special measures to ensure their rights are protected. Currently, when police are dealing with a vulnerable suspect or an individual about whom there is doubt about their capacity, then the services of an appropriate adult are sought. This should occur as soon as practicable and before interview.

133. Crown Office instructions on vulnerable suspects already provide that:
“Any cases involving suspects of any age who require the support of an appropriate adult must be provided with access to a solicitor prior to interview. They should not be allowed to waive this right.”

134. As the Bill’s provisions for vulnerable adults align with this Crown Office instruction, the Bill will not have a financial impact for the police.

Carloway provisions in general – police ICT

135. The Bill’s provisions will entail a significant level of change in the areas associated with custody systems, case reporting/management systems, and the Criminal History System.

136. The SPA is currently considering a major programme to redesign ICT processes and systems. If the programme is taken forward, any changes required for this Bill’s provisions should be achievable as part of this wider redesign without substantial additional costs.

Other provisions

137. The other Carloway provisions not mentioned in the previous section are anticipated to have no substantial costs for the SPA.

CROWN OFFICE AND PROCURATOR FISCAL SERVICE

Measures with cost implications

Liberation from police custody

138. COPFS has identified two scenarios where the Bill’s provisions for liberation from police custody could have resource implications for them.

139. COPFS has developed a process model for cases where a suspect has been released by the police, HMRC or UKBA on investigative bail and wishes to challenge his bail conditions. This model sets out the work required at an administrative and professional level, and shows overall staff costs for COPFS of £64.42 per case. With an estimated 425 cases per year that leads to £27,000 per annum in staff costs.

140. COPFS has also developed a process model for cases where a suspect has been released by the police, HMRC or UKBA on undertaking and wishes to challenge his bail conditions. This also shows anticipated staff costs of £64.42 per case. With an estimated 2,950 cases per year that leads to £190,000 per annum in staff costs.

141. In total, COPFS identifies £217,000 per annum in additional staff costs as a result of the Bill’s provisions for liberation from police custody. This does not translate directly into additional financial cost, but will be part of general staff workloads. This has therefore been classed as an opportunity cost.
Questioning

142. COPFS has identified three scenarios where the Bill’s provisions for police questioning after charge could have resource implications for them. COPFS has provided process models for the three different scenarios, setting out work required at an administrative and professional level. See paragraphs 99-100 for more information on police and COPFS estimates of the prevalence of post-charge questioning.

143. For cases where the suspect has been advised he is to be reported to the Procurator Fiscal, is being kept in custody, and police/HMRC/UKBA wish to further question the suspect before he appears in court the next day, COPFS anticipate costs for them of £25.43 per case. With an estimated 50 cases per year, this leads to £1,000 per annum in staff costs.

144. For cases where the suspect has been advised he is to be reported to the Procurator Fiscal, has been released on undertaking or report, and the police/HMRC/UKBA wish to further question the suspect before he appears in court, COPFS anticipate costs for them of £43.38 per case. With an estimated 100 cases per year, this leads to £4,000 per annum in staff costs.

145. For cases where the suspect has appeared in court and police/HMRC/UKBA wish to further question the suspect, COPFS anticipate costs for them of £86.77 per case. With an estimated 50 cases per year, this leads to £4,000 per annum in staff costs.

146. In total, COPFS identify £10,000 per annum in additional staff costs as a result of the Bill’s provisions for police questioning after charge. This does not translate directly into additional financial cost, but will be part of general staff workloads. This has therefore been classed as an opportunity cost.

Corroboration and sufficiency of evidence

147. It is in relation to the provisions for the removal of the requirement for corroboration that COPFS has identified the most substantial cost implications. This relates to a possible increase in the number of reports received from the police, and in the number of prosecutions at solemn and summary court.

148. Detail of the Police Scotland shadow reporting exercise is provided in paragraphs 106-107. The results of the exercise showed a likely increase in the number of SPRs of between 1.5 and 2.2%, and most likely to be at the 1.5% level.

149. The increase in cases received from the police will result in increased costs for initial case preparation. This process is applied to all case received.
Table 12: additional COPFS costs for initial case preparation

<table>
<thead>
<tr>
<th>Process</th>
<th>Current Cost £</th>
<th>Increased cost £ (Low estimate)</th>
<th>Increased cost £ (Best estimate)</th>
<th>Increased cost £ (High estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial case preparation</td>
<td>4,702,000</td>
<td>71,000</td>
<td>71,000</td>
<td>103,000</td>
</tr>
</tbody>
</table>

150. A further shadow marking exercise was conducted by COPFS to consider the potential impact on the number of prosecutions. A draft new qualitative prosecutorial test was applied by six Procurator Fiscal Deputes (PFDs) with a range of experience. The deputes' assessment was made on the basis of the information contained in the SPR submitted by the police. The deputes conducting the shadow marking exercise did not know the original marking decision.

151. The results of the COPFS shadow marking exercise demonstrated that an anticipated increase of the following was likely:

- Summary Prosecutions 1% (due to the statistical sample the range could be from -1% to 4%)
- Solemn Prosecutions 6% (due to the statistical sample the range could be from 2% to 10%).

152. The combined impact of the two exercises is summarised in the following table.

Table 13: Potential % increase in the number of prosecutions (to nearest 0.1%)

<table>
<thead>
<tr>
<th></th>
<th>Low estimate</th>
<th>Best estimate</th>
<th>High estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary prosecutions</td>
<td>0.5%</td>
<td>2.5%</td>
<td>6.3%</td>
</tr>
<tr>
<td>Solemn prosecutions</td>
<td>3.5%</td>
<td>7.6%</td>
<td>12.4%</td>
</tr>
</tbody>
</table>

153. A relatively small sample size was used in analysis of the potential impact of removing the requirement for corroboration. This means that the confidence interval between which the impacts could lie – presented as low and high estimates in the table – is very large. However it is extremely unlikely that impacts at the high end of the scale would be seen.

154. The increases in summary and solemn prosecutions will result in additional costs for COPFS, as set out in the following table.
Table 14: additional COPFS costs for summary and solemn prosecutions

<table>
<thead>
<tr>
<th>Process</th>
<th>Current Cost £</th>
<th>Increased cost £ (Low estimate)</th>
<th>Increased cost £ (Best estimate)</th>
<th>Increased cost £ (High estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary courts</td>
<td>20,365,000</td>
<td>102,000</td>
<td>509,000</td>
<td>1,283,000</td>
</tr>
<tr>
<td>Solemn courts</td>
<td>35,131,000</td>
<td>1,240,000</td>
<td>2,670,000</td>
<td>4,360,000</td>
</tr>
</tbody>
</table>

155. This gives a total estimated cost implication of £3,250,000 from increases in case volumes following the removal of the requirement for corroboration. These costs should be considered in the context of reductions in case volumes in recent years, as described at paragraph 34.

156. This estimate is based on staff costs. This does not translate directly into additional financial cost, but will be part of general staff workloads. This £3,250,000 has therefore been classed as an opportunity cost.

**Carloway provisions in general – increase in appeals**

157. While the level of appeals within Scotland is relatively stable, experience suggests that a change in law or a Supreme Court judgment normally leads to a short-term increase in the number of defence appeals lodged. COPFS therefore anticipate that the significant changes to the Scottish Criminal Justice System made by this Bill will give rise to legal challenges related to those changes.

158. Based on the number of appeals following the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010, COPFS anticipate that for the first three years after implementation of the Bill there is likely to be a 10% increase in the Appeals Unit case load. Due to the additional work involved, this would result in an increase in costs of £87,000 per annum for three years. This estimate is based on staff time costs, and so does not translate directly into additional financial cost, but will be part of general staff workloads. This has therefore been classed as an opportunity cost.

**Carloway provisions in general – COPFS training**

159. The removal of the requirement of corroboration will require COPFS to apply a new prosecutorial test. This is a significant change and applying a new prosecutorial test will therefore require training for all legal staff within COPFS. COPFS staff will also require to be trained on the new arrest/detention/investigative bail and appeal provisions and any miscellaneous items that may be lodged throughout the passage of the bill. This training will be one-off and not recurring.

160. The implementation of ECHR into Scots law in 1999 was also a significant change in the legal approach that was required to be taken by prosecutors and COPFS assess that the training
needs for this Bill will be broadly similar to those undertaken at that time, which was three days training for legal staff.

161. The training requirement is assumed to extend to all 580 legal staff with an average of 20 trainees on each 3 day training event, and 815 operational admin staff with an average of 16 trainees on each one day training event.

162. Nothing has been included for the potential cost of updating existing training materials and events, which is assumed to be manageable within the normal workload of the Training Department, as this training will be prioritised over other more routine training.

163. COPFS has estimated total staff costs at £920,000, including trainer time to develop the course, trainer time to deliver events, and delegate time to attend training. COPFS training staff are already in place, and it is not anticipated that additional staff would be taken on to develop or deliver the training. This would be achieved within existing staff workload. In the great majority of cases, staff attendance at training would be by reallocation from their regular work, rather than as overtime. The above stated costs are therefore treated as an opportunity cost rather than a concrete financial cost.

**Measures with no or marginal costs**

164. The Bill provisions not mentioned in the previous section are anticipated to have no substantial costs for COPFS.

Carloway provisions in general – COPFS communication costs

165. It is anticipated that new documentation for COPFS will require to be produced in a number of areas. It is anticipated that in line with carbon management policies and becoming a more “green” organisation this documentation will likely be internet focused and as such, COPFS consider that any additional communication costs can be managed within the existing budget.

**SCOTTISH COURT SERVICE**

166. Costs on SCS will arise primarily from the increase in cases following the removal of the requirement for corroboration and the proposals in respect of new applications to the sheriff.

167. Whilst the Bill’s provisions relating to the Bowen recommendations are likely to make savings in court time, they are unlikely to make actual cash savings for the SCS. Any time freed up by the implementation of the provisions will be used to allocate court cases more quickly and use court time more effectively at both High court and local court level, but it appears that they are not of a scale that will result in the reduction of numbers of either judiciary or staff at any particular court. However some of the anticipated costs noted may be balanced by some of the estimated court time savings.
Measures with cost implications

Liberation from police custody

168. The Bill’s provisions for liberation from police custody will result in new applications to the sheriff for review of special conditions. This will require a fundamental change to the IT system to record information of police cases prior to the commencement of court proceedings. SCS has provided early estimates for this as one-off cost of £40,000, within a possible range of £30,000 to £50,000. This is capital expenditure.

169. There will also be an increase in costs in relation to the processing of the new type of applications, which may be opposed by the Crown. The current estimation of expected volumes is around 3,375 pa. If 50% of these are opposed by the Crown that would result in an additional 1,687 cases heard in court. SCS estimate around 15 minutes for such a hearing, suggesting costs of £84,000 per annum, and with unopposed chambers applications using a simplified procedure costing around £19,000 this would bring it to a total of cost around £103,000 per annum.

170. There is a finite amount of court time available under the current arrangements. The Scottish Government anticipates that these additional requirements will be managed within current resources. This £103,000 has therefore been classed as an opportunity cost.

Questioning

171. The Bill’s provisions for questioning of suspects after charge will require applications to the sheriff. In assessing costs for SCS, it is important to differentiate between applications made prior to the person’s first appearance in court, and those made following first appearance.

172. In the first case, SCS suggest that applications will be dealt with out of court by the sheriff (in a way similar to the police seeking a warrant), that there will be no opportunity for the applications to be opposed and if necessary the police may also seek a warrant for the accused to attend for questioning at the same time. It is anticipated that such applications will be cost neutral for SCS.

173. In the second scenario, where the application is made at or following first court appearance, a court diet will be fixed for the sheriff to consider the application made by the Crown and to hear any opposition to the application. There will be an increase in costs in relation to the processing of this new type of court application, which will require a court hearing.

174. COPFS has estimated that there would be around 50 cases per year of applications for post-charge questioning following first appearance at court. See paragraph 100 for more detail.

175. SCS estimates that each case, which will require to be called in court to allow for opposition, will take about 30 minutes of court time, giving a total estimated cost of £5,000 per annum.

176. There is a finite amount of court time available under the current arrangements. The Scottish Government anticipates that the additional requirements will be managed within current resources. This £5,000 has therefore been classed as an opportunity cost.
Corroboration and sufficiency of evidence

177. The removal of the requirement of corroboration is likely to result in additional cases being brought to court. The figures from police and COPFS for the numbers obtained in their relative shadow marking exercises suggested that increases will be in the following ranges. However, it is considered very unlikely that increases of the extent suggested in the high estimate will be seen (see paragraphs 106-107 and 150-153 for more detail).

Table 15: potential % increase in the number of prosecutions (to nearest 0.1%)

<table>
<thead>
<tr>
<th></th>
<th>Low estimate</th>
<th>Best estimate</th>
<th>High estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary prosecutions</td>
<td>0.5%</td>
<td>2.5%</td>
<td>6.3%</td>
</tr>
<tr>
<td>Solemn prosecutions</td>
<td>3.5%</td>
<td>7.6%</td>
<td>12.4%</td>
</tr>
</tbody>
</table>

178. The SCS annual report for 2011/12\(^\text{15}\) states that there were 6,564 cases in the solemn courts. In relation to summary proceedings, there were 74,080 cases in the Sheriff Courts and 57,633 in the Justice of the Peace courts. Applying the percentage increases in table 15 above would result in the following number of additional prosecutions. This assumes that 20% of solemn cases would be prosecuted in the High Court, with the remainder in the Sheriff Courts.

Table 16: additional prosecutions

<table>
<thead>
<tr>
<th></th>
<th>Low estimate</th>
<th>Best estimate</th>
<th>High estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Court</td>
<td>46</td>
<td>100</td>
<td>163</td>
</tr>
<tr>
<td>Sheriff Court solemn</td>
<td>184</td>
<td>399</td>
<td>651</td>
</tr>
<tr>
<td>Sheriff Court summary (includes Stipendiary cases)</td>
<td>370</td>
<td>1,852</td>
<td>4,667</td>
</tr>
<tr>
<td>Justice of the Peace courts</td>
<td>288</td>
<td>1,441</td>
<td>3,631</td>
</tr>
</tbody>
</table>

179. Combining this with the average costs per case of providing Legal Aid in each court in 2012-13 allows estimation of the costs resulting from additional prosecutions. This gives a total estimated cost implication of £2,500,000.

Table 17: costs resulting from additional prosecutions

<table>
<thead>
<tr>
<th></th>
<th>Low estimate</th>
<th>Best estimate</th>
<th>High estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Court</td>
<td>£410,000</td>
<td>£900,000</td>
<td>£1,460,000</td>
</tr>
<tr>
<td>Sheriff Court solemn</td>
<td>£340,000</td>
<td>£740,000</td>
<td>£1,210,000</td>
</tr>
<tr>
<td>Sheriff Court summary (includes Stipendiary cases)</td>
<td>£120,000</td>
<td>£620,000</td>
<td>£1,560,000</td>
</tr>
<tr>
<td>Justice of the Peace courts</td>
<td>£50,000</td>
<td>£240,000</td>
<td>£610,000</td>
</tr>
<tr>
<td>Total</td>
<td>£930,000</td>
<td>£2,500,000</td>
<td>£4,840,000</td>
</tr>
</tbody>
</table>

180. However the cost of a High court case is significantly higher if it proceeds to trial, with the average plea costing less than 1.5% of the average case going to trial. The types of case making up the increase going to the High Court following removal of the requirement for corroboration is currently unknown, but if the cases coming to the High Court as part of the increase in business are more likely than average to test the Crown’s position on evidence and go to trial, the costs will increase accordingly.

181. These costs should be considered in the context of reductions in case volumes in recent years, as described at paragraph 34.

182. The costs from additional court time from the removal of the requirement for corroboration are to some extent balanced by the savings in court time associated with the Bowen elements of this Bill. See paragraphs 256-259 for more detail. There is a finite amount of court time available under the current arrangements. The Scottish Government anticipates that these additional requirements will be managed within current resources. This £2,500,000 has therefore been classed as an opportunity cost.

**Measures with no or marginal costs**

183. The Carloway provisions not mentioned in the previous section are anticipated to have no substantial costs for SCS.

**SCOTTISH PRISON SERVICE**

**Measures with cost implications**

**Removal of requirement for corroboration**

184. It is anticipated that the removal of the requirement for corroboration in criminal cases is likely to result in an increase in the number of prosecutions, which will impact on the SPS on the basis that additional prosecutions are likely to lead to additional convictions and additional custodial sentences. Based on the analysis by Police Scotland and COPFS (see paragraphs 106-107 and 150-153 for more detail), the potential scale of increases in prosecutions is as per the table below.

<table>
<thead>
<tr>
<th></th>
<th>Low estimate</th>
<th>Best estimate</th>
<th>High estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary prosecutions</td>
<td>0.5%</td>
<td>2.5%</td>
<td>6.3%</td>
</tr>
<tr>
<td>Solemn prosecutions</td>
<td>3.5%</td>
<td>7.6%</td>
<td>12.4%</td>
</tr>
</tbody>
</table>

185. Figures from Criminal Proceedings in Scotland 2011-12 show that 118,590 individuals were proceeded against in the solemn courts, with the equivalent figure for solemn proceedings standing at 6,146. The increase in prosecutions could therefore be as follows:
These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 20 June 2013

Table 19: absolute increase in the number of prosecutions (to nearest 10)

<table>
<thead>
<tr>
<th></th>
<th>Low estimate</th>
<th>Best estimate</th>
<th>High estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary prosecutions</td>
<td>580</td>
<td>2,980</td>
<td>7460</td>
</tr>
<tr>
<td>Solemn prosecutions</td>
<td>220</td>
<td>470</td>
<td>760</td>
</tr>
</tbody>
</table>

186. A relatively small sample size was used in analysis of the potential impact of removing the requirement for corroboration. This means that the confidence interval between which the impacts could lie – presented as low and high estimates in the table – is very large. However COPFS are of the view that the best estimate is expected to be an accurate forecast of the increased number of prosecutions.

187. Modelling of the potential impact of these additional prosecutions on the number of prison places required has been carried out on the following assumptions:

- The distribution of crimes to which prosecutions will relate are as per the COPFS research done for the Carloway Review (recent shadow marking and reporting exercises identified only the overall impact at summary and solemn court level).

- Additional prosecutions will follow the same pattern as those which have previously gone through the criminal justice system – that is, the same proportion will result in a successful conviction, the same proportion will result in a custodial sentence, and the average sentence length will be the same.

188. The costs of keeping accused people on remand has also been taken into account – there would only be additional costs where an accused person kept on remand did not receive a custodial sentence (for those who did get a custodial sentence, time on remand would be offset from the sentence served, thus meaning there were no additional costs).

189. SPS must take those offenders sentenced by the courts irrespective of the numbers in their custody at any one time. Through the years as the numbers of those in custody has increased SPS has shown that it is adaptable and has been able to react and accommodate these increases.

190. The table below sets out the number of additional prison places which could potentially be required from 2015-16 when the new provisions will come into force, and the associated costs of providing those extra prisoner places. It is anticipated that the full effect on prisoner places would not be seen immediately but would increase over a period of around 4-5 years. The figure of £37,302 used is the average annual cost of one prison place. This is calculated by dividing SPS’s overall running costs, including depreciation, by the design capacity of the prison estate in 2011-12.
Table 20: additional costs for SPS over time

<table>
<thead>
<tr>
<th></th>
<th>2015-16</th>
<th>2016-17</th>
<th>2017-18</th>
<th>2018-19</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of impact</td>
<td>20%</td>
<td>60%</td>
<td>80%</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Prison places</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low estimate</td>
<td>50</td>
<td>140</td>
<td>180</td>
<td>230</td>
</tr>
<tr>
<td><strong>Best estimate</strong></td>
<td>110</td>
<td>320</td>
<td>430</td>
<td>540</td>
</tr>
<tr>
<td>High estimate</td>
<td>190</td>
<td>570</td>
<td>760</td>
<td>950</td>
</tr>
<tr>
<td><strong>Costs based on £37,302 per additional place per annum</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low estimate</td>
<td>£1,850,000</td>
<td>£5,200,000</td>
<td>£6,700,000</td>
<td>£8,500,000</td>
</tr>
<tr>
<td><strong>Best estimate</strong></td>
<td>£4,100,000</td>
<td>£11,850,000</td>
<td>£15,900,000</td>
<td>£20,000,000</td>
</tr>
<tr>
<td>High estimate</td>
<td>£7,000,000</td>
<td>£21,100,000</td>
<td>£28,100,000</td>
<td>£35,200,000</td>
</tr>
</tbody>
</table>

191. **Current Scottish Government projections**¹⁶ anticipate prison population growth of around 200 per annum over the period in question, suggesting that the prison population may reach around 9,000 by 2017-18, against a current capacity of 8,100. The changes made by this Bill were not specifically considered in establishing these figures, but the projections do implicitly take into account likely legislative and other policy changes.

192. In the short term, SPS considers that it can accommodate the current forecast population within its existing capacity and existing budget. If the recent drop in short term and remand populations continues this will also help to absorb the potential impact of any offenders sent to custody as a result of the changes in the law on corroboration. Similarly the SPS considers it could operate safely at these levels with a comparatively moderate capital and running cost investment without the need to commission a new prison.

193. These possible increases in prisoner numbers should also be considered in the context of the introduction of the Community Payback Order as a more robust and flexible community sentence, the presumption against imposing short prison sentences of three months or less, and a range of policy initiatives designed to reduce reoffending such as the Reducing Reoffending

Change Fund. This wider work is likely to have a positive impact on the prison population, and the capacity to absorb any increases from other sources.

194. SPS has indicated that the increases in prisoner population set out as best estimates above can be accommodated within the flexibility that exists in the provision of prison places. There are limits to this flexibility, and long term increases may accelerate the rate that this flexibility is used up. However, on the assumption of a steady level of resources being available to SPS, the additional costs set out above can be considered opportunity costs.

195. Prison population projections for 2017-18 range from 7,900 (low variant) to 10,500 (high variant). Given the wide range of uncertainty in the projections, at this stage it is not possible to say whether or not this proposal would trigger the need for additional capacity, nor the precise timing of any additional capacity requirements. Following implementation, the actual increase in the number of summary and solemn cases will therefore need to be monitored closely to see whether it is likely to have any implications for prison estate planning.

**Measures with no or marginal costs**

196. The Carloway provisions not mentioned in the previous section are anticipated to have no substantial costs for SPS.

**LEGAL AID FUND**

197. Estimated costs in this section are based on current legal aid fee structures which may be subject to change in future.

**Measures with cost implications**

**Liberation from police custody**

198. The Bill provides for suspects being liberated from police custody to return at a later stage for resumption of questioning. Special conditions can be attached to this, with the ability to challenge these special conditions in a court hearing before a sheriff. If representation is to be made available at these hearings, then Assistance by Way of Representation (ABWOR) would be the only way to do this, as criminal legal aid cannot be made available before the suspect is charged. SLAB estimate that the costs of such challenges would be in the region of £83,000, on the following basis:

- Police Scotland estimates for persons released on special conditions – 1,620 (see paragraphs 59-60)
- It is estimated that 25% of these people might challenge these special conditions – 405
- A figure of £200 has been used for the purposes of estimating the cost of the average cost of ABWOR for these hearings
- $405 \times £200 = £81,000.$
199. The new Bill also provides for suspects who are liberated from police custody to appear in court at a later date to also have special conditions attached, with the ability to challenge these special conditions in a court hearing before a sheriff. If representation is to be made available at these hearings, then ABWOR would be the only way to do this, as criminal legal aid cannot be made available before the suspect is charged. SLAB estimate that the cost of these challenges would be in the region of £585,000 on the following basis:

- 54,000 suspects currently released in this way.
- Police estimate that between 10% and 20% of these people could have special conditions attached (5,400 to 10,800, with a mid-range estimate of 8,100)
- When added to the current figure of 3,601 people released on undertakings with special conditions, this gives a total of 11,701
- It is estimated that 25% of these people might challenge these special conditions – 2,925
- A figure of £200 has been used for the purposes of estimating the cost of the average cost of ABWOR for these hearings
- 2,925 x £200 = £585,000.

200. It is anticipated that any increase in police or procurator fiscal liberation undertaking cases could also result in an increase in the number of breach proceedings which are raised when clients fail to attend at the police station or court after giving an undertaking to appear. Legal aid can be made available for these breach proceedings. In 2011-12, there were 2,301 grants of ABWOR, summary and solemn criminal legal aid for these proceedings. In total, £1,970,000 was spent for these types of cases during the year. If there is a 10% increase in these proceedings, then this would cost an extra £197,000.

201. In total, therefore, SLAB estimate additional costs of £863,000 per annum.

Legal advice

202. The Board currently runs the Solicitor Contact Line as part of the wider Police Station Duty Scheme. This provides a telephone solicitor contact point which operates 24 hours a day, seven days a week. Where a suspect being questioned at a police station requires legal advice, the police call the Contact Line who will either then contact the named solicitor for the client, or be available to provide telephone advice direct to the client. The contact line also makes arrangements for local duty solicitors to attend personally at police stations where this is required or requested by the suspect; or, if the duty solicitor is unavailable, to attend themselves. At present, the cost of paying Board solicitors and associated staff for this service is around £650,000 per year.

203. The Bill provides for accused people who are detained but not questioned to have the right to consult with a solicitor. It is anticipated that this would increase the calls to the solicitor contact line, and the number of instances where Board solicitors are required to advise suspects at police stations. At present, SLAB deals with around 60 suspects per day who are requesting legal advice. In a third of these cases, the suspects do not have a named solicitor, so solicitors on the Contact Line provide them with legal advice. In the other two thirds of these cases, the
suspects do have a named solicitor who is then contacted to advise them that their clients are seeking legal advice from them.

204. As described in paragraph 78, the Bill is estimated to result in an additional 163,360 people being eligible to access legal advice in the police station.

205. In discussion with SLAB, Police Scotland and other stakeholders the Scottish Government has concluded that the take-up rate for this group will likely be lower than for those who are questioned, on the basis that detainees being released without being questioned are less likely to seek legal advice. A likely range of 20% to 53.6% take-up rates for solicitor access for this non-interviewed group has been modelled, with a most likely estimate at 35% (see table below). It is anticipated that the take-up rate for suspects who are interviewed would stay the same.

Table 21: total numbers of people seeking legal advice

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Total people seeking legal advice</th>
</tr>
</thead>
<tbody>
<tr>
<td>53.6% take-up for interviews; 20% take-up for non-interviews</td>
<td>22,224 + 32,672 = 54,896</td>
</tr>
<tr>
<td>53.6% take-up for interviews; 35% take-up for non-interviews</td>
<td>22,224 + 57,176 = 79,400</td>
</tr>
<tr>
<td>53.6% take-up for interviews; 53.6% take-up for non-interviews</td>
<td>22,224 + 87,561 = 109,785</td>
</tr>
</tbody>
</table>

206. At 20%, an additional 32,672 people could be looking for legal advice, giving a total of about 54,896, compared to the 22,224 SLAB are dealing with at the moment, an increase in the region of 2.5 times.

207. Taking a most likely estimated increase of 35% would mean an additional 57,176 people looking for legal advice, giving a total of about 79,400, compared to the 22,224 SLAB are dealing with at the moment, an increase in the region of 3.5 times.

208. Currently, the Solicitor Contact Line operates with two solicitors on shift at any one time 24 hours a day, seven days a week. SLAB has modelled staffing requirements on the contact line based on these potential percentage increases. Because of the 24/7 nature of this service, the costs of providing an additional solicitor for each day is roughly five whole time equivalents at about £59,000 per annum each (including shift allowances, attendance payments and employers’ costs). Therefore, the cost of providing an additional solicitor for each day would be about £295,000 per year.
209. The costs of these possible scenarios are summarised in the following table. As indicated above, it is anticipated that the 35% figure to be the one that is most likely.

**Table 22: financial impact on the Solicitor Contact Line**

<table>
<thead>
<tr>
<th>Scenario</th>
<th>People seeking legal advice</th>
<th>Impact on SLAB Solicitor Contact Line</th>
<th>Additional cost to SLAB</th>
</tr>
</thead>
<tbody>
<tr>
<td>53.6% take up for interviews</td>
<td>54,896</td>
<td>2 additional solicitors per shift</td>
<td>£590,000</td>
</tr>
<tr>
<td>20% take up for non-interviews (lower limit)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53.6% take up for interviews</td>
<td>79,400</td>
<td>2 additional solicitors per shift 2 additional admin worker per shift</td>
<td>£890,000</td>
</tr>
<tr>
<td>35% take up for non-interviews (best estimate)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53.6% take up for interviews</td>
<td>109,785</td>
<td>4 additional solicitors per shift 4 additional admin workers per shift</td>
<td>£1,780,000</td>
</tr>
<tr>
<td>53.6% take up for non-interviews (upper limit)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

210. A number of steps might be taken with the aim of ensuring that legal advice is provided in the most effective and efficient manner. These could include locating solicitors at the busiest police stations, email intimation from the Police to the Board, and wider use of video links.

211. It is anticipated that the great majority of additional advice as a result of the Bill would be offered by telephone. This is discussed at paragraph 81. There would likely be some increase in the number of personal attendances by solicitors, which could increase the average advice and assistance cost.

212. If the number of grants of advice and assistance by private and PDSO solicitors also increases 3.5 times as a result legal advice being available to everyone in a police station, then this would result in a total of around 12,600 grants of advice and assistance every year, an increase of 9,000.

213. SLAB has advised that, under the existing fee structure, the average cost of these cases would be likely to increase from £60 to somewhere in the range £90-£120, due to more personal attendances, as well as the following additional factors:

- The support required for vulnerable adults could well extend the time taken by solicitors at police stations
- The 6 hour review periods could also lead to increased advice
- Refusal of Police bail could also extend legal advice
- Questioning after charge, and questioning after police bail could also mean further legal advice.
These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 20 June 2013

214. This would result in an estimated increase in costs for advice and assistance by private and PDSO solicitors of between £810,000 and £1,080,000, with a mid-range estimate at £945,000.

**Corroboration and sufficiency of evidence**

215. It is anticipated that the removal of the requirement of corroboration would result in additional cases being brought to court. The figures from police and COPFS for the numbers obtained in their relative shadowing exercises suggested that increases will be in the following ranges. However, it is considered very unlikely that increases of the extent suggested in the high estimate will be seen (see paragraphs 106-107 and 150-153 for more detail).

<table>
<thead>
<tr>
<th>Table 23: potential % increase in the number of prosecutions (to nearest 0.1%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Summary prosecutions</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>0.5%</td>
</tr>
<tr>
<td><strong>Solemn prosecutions</strong></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

216. During 2011/2012, there were proceedings against 6,146 people in the solemn courts and 118,590 in the summary courts. Applying the percentage increases in the table above would result in the following number of additional prosecutions. This assumes that 20% of solemn cases would be prosecuted in the High Court, with the remainder in the Sheriff Courts, and 64% of summary cases prosecuted in the Sheriff Courts with the remainder in Justice of the Peace courts.

<table>
<thead>
<tr>
<th>Table 24: additional prosecutions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>High Court</strong></td>
</tr>
<tr>
<td>Low estimate</td>
</tr>
<tr>
<td>43</td>
</tr>
<tr>
<td><strong>Sheriff Court solemn</strong></td>
</tr>
<tr>
<td>174</td>
</tr>
<tr>
<td><strong>Sheriff Court summary (includes Stipendiary cases)</strong></td>
</tr>
<tr>
<td>368</td>
</tr>
<tr>
<td><strong>Justice of the Peace courts</strong></td>
</tr>
<tr>
<td>207</td>
</tr>
</tbody>
</table>
217. Combining this with the average costs per case of providing Legal Aid in each court in 2012-13 allows estimation of the costs resulting from additional prosecutions. This gives a total estimated cost implication of **£3,900,000** using the best estimate of case volumes. These costs should be considered in the context of reductions in case volumes in recent years, as described at paragraph 34.

**Table 25: costs for SLAB resulting from additional prosecutions**

<table>
<thead>
<tr>
<th></th>
<th>Low estimate</th>
<th>Best estimate</th>
<th>High estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Court</td>
<td>£730,000</td>
<td>£1,580,000</td>
<td>£2,580,000</td>
</tr>
<tr>
<td>Sheriff Court solemn</td>
<td>£330,000</td>
<td>£700,000</td>
<td>£1,150,000</td>
</tr>
<tr>
<td>Sheriff Court summary (includes Stipendiary cases)</td>
<td>£230,000</td>
<td>£1,220,000</td>
<td>£3,040,000</td>
</tr>
<tr>
<td>Justice of the Peace courts</td>
<td>£80,000</td>
<td>£410,000</td>
<td>£1,030,000</td>
</tr>
<tr>
<td>Total</td>
<td>£1,370,000</td>
<td><strong>£3,900,000</strong></td>
<td><strong>£7,790,000</strong></td>
</tr>
</tbody>
</table>

**Appeal procedures**

218. SLAB has indicated that any impact of hearings in chambers on late leave to appeal compared to oral hearings would be cost neutral. Solicitors and counsel are entitled to the same fees for appearing in chambers as they would be at more formal court hearings.

219. SLAB does not consider that there would be savings accruing from more cases proceedings by way of note of appeal as opposed to stated case. The current feeing structure means that counsel are paid slightly more for notes of appeal as opposed to stated cases, with solicitors being paid slightly more for stated cases.

220. SLAB has estimated that 33% of criminal appeal cases include work involved in submitting a late appeal. In addition, the average extra expense of work involved in these late appeals, notably presenting reasons why appeals should be heard late, is about £208 per case. SLAB therefore estimates that the additional cost of dealing with late appeals is around £137,000 per year. If the new measures reduce this by 50% then this could bring **savings of around £68,500 per year**.

221. In 2011-12, criminal legal aid was granted for 17 Bill of Suspension cases and 6 Bill of Advocation cases. If these cases proceeded by leave to appeal, with a sift system, then the costs of these could be reduced marginally.
Measures with no or marginal costs

Child suspects

222. SLAB figures show that 6.9% of suspects who are referred to the Contact Line are under 18, with 1.2% of suspects under 16.

223. The Bill states that all children under the age of 16 should have legal advice, and not have the facility to waive that right, and that suspects who are 16 or 17 should only be able to waive that right if there is agreement of any adult reasonably named by the person.

224. Police Scotland has indicated they do not consider that these measures will have a major impact on the numbers of young people seeking legal advice in police stations (as described at paragraph 131). Through other measures such as the Children and Young People’s Bill and the police’s own strategic reviews, they are looking to reduce the numbers of young people taken through police stations and the criminal justice system. Therefore, the Scottish Government has assumed that there will not be any specific increase in the number of cases where legal advice is requested as a result of these particular measures.

Other provisions

225. The other Carloway provisions not mentioned in the previous section are anticipated to have no substantial costs for SLAB.

SCOTTISH CHILDREN’S REPORTER ADMINISTRATION

226. No additional costs have been identified for SCRA. The removal of the requirement for corroboration in children’s hearings proceedings is not anticipated to impact on the number of children and young people referred to the Reporter nor on the role of Reporters in determining whether a case should be taken to a children’s hearing. The number of children’s hearings cases that are remitted to the court will continue to depend on whether the child or young person accepts the grounds on which they have been referred to the hearing.

COSTS ON LOCAL AUTHORITIES

Measures with cost implications

Child suspects

227. The provisions relating to child suspects will potentially bring new costs to local authorities. 16 and 17 year olds can seek support from any person they name – from parent to relative to friend. In the great majority of cases such support is likely to be sought from people known to the suspect but where such support cannot be found local authority provision is the backstop. As Carloway notes in his review, that is the current practice for under 16s and works well.

228. Consultation with representatives of Police Scotland, Association of Directors of Social Work (“ADSW”) and Convention Of Scottish Local Authorities (“COSLA”) confirmed the Scottish Government’s initial view that only a small proportion of 16 and 17 year olds would
want to seek support from a social worker. For the most part a young person seeking support is likely to do so from a parent, family member or friend. Where moral support is wanted, and where no such familiar provision can be found, existing practice for under 16s would be the provision of a social worker. In the context of 16 and 17 year olds this is new provision and there is therefore no solid basis beyond the experience of professionals for determining how often this would occur. Costs have been modelled based on such support being sought in 5%, 10% and, as an upper limit, 20% of cases. This is based on an assumption that the nature of the role and existing provision is such that it would most likely be best provided by social work services. This uses an hourly rate for social work support of £21 plus 25% on-costs giving a total of £26.25 and an average time commitment of four hours (the midpoint of a range of two to six hours allowing for variations in rurality and complexity). Further detail on the numbers of 16 and 17 year olds can be found at paragraph 129. Table 26 below sets out the cost implications.

Table 26: additional costs per year for local authorities

<table>
<thead>
<tr>
<th>Assumption</th>
<th>Cases</th>
<th>Costs</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower – 5%</td>
<td>400</td>
<td>£26.25 x 4 x 400</td>
<td>£42,000</td>
</tr>
<tr>
<td>Mid – 10%</td>
<td>800</td>
<td>£26.25 x 4 x 800</td>
<td>£84,000</td>
</tr>
<tr>
<td>Upper – 20%</td>
<td>1600</td>
<td>£26.25 x 4 x 1600</td>
<td>£168,000</td>
</tr>
</tbody>
</table>

229. 10% has been used as the most likely estimate. These costs would fall nationally across local authorities, distributed at the rates at which they bring young people to police offices.

230. This estimate is based on the hourly costs associated with a social worker’s time. This does not translate directly into additional financial cost, but would be part of the general social workers’ workloads. This £84,000 has therefore been classed as an opportunity cost.

Corroboration and sufficiency of evidence

231. Removal of the requirement for corroboration in criminal cases is likely to result in an increase in the number of prosecutions, which will impact on local authorities on the basis that additional prosecutions are likely to lead to additional community sentences. Based on the analysis by Police Scotland and the COPFS (see paragraphs 106-107 and 150-153 for more detail), the potential scale of increases in prosecutions is as per the table below.

Table 27: potential % increase in the number of prosecutions (to nearest 0.1%)

<table>
<thead>
<tr>
<th></th>
<th>Low estimate</th>
<th>Best estimate</th>
<th>High estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary prosecutions</td>
<td>0.5%</td>
<td>2.5%</td>
<td>6.3%</td>
</tr>
<tr>
<td>Solemn prosecutions</td>
<td>3.5%</td>
<td>7.6%</td>
<td>12.4%</td>
</tr>
</tbody>
</table>

232. Figures from Criminal Proceedings in Scotland 2011-12\(^{17}\) show that 118,590 individuals were proceeded against in the summary courts, with the equivalent figure for solemn proceedings standing at 6,146. The increase in prosecutions would therefore be as follows:

\(^{17}\)http://www.scotland.gov.uk/Publications/2012/11/5336
These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 35) as introduced in the Scottish Parliament on 20 June 2013

Table 28: absolute increase in the number of prosecutions (to nearest 10)

<table>
<thead>
<tr>
<th></th>
<th>Low estimate</th>
<th>Best estimate</th>
<th>High estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary prosecutions</td>
<td>580</td>
<td>2,980</td>
<td>7,460</td>
</tr>
<tr>
<td>Solemn prosecutions</td>
<td>220</td>
<td>470</td>
<td>760</td>
</tr>
</tbody>
</table>

233. Modelling of the potential impact of these additional prosecutions on the number of community sentences has been carried out on the following assumptions:

- The distribution of crimes to which prosecutions will relate are as per the COPFS research done for the Carloway Review (recent shadow marking and reporting exercises identified only the overall impact at summary and solemn court level).
- Additional prosecutions will follow the same pattern as those which have previously gone through the criminal justice system – that is, the same proportion will result in a successful conviction, and the same proportion will result in a community sentence.

234. The table below sets out the number of community sentences which could potentially be required, as well as the associated costs. Costs have been calculated on the basis of an assumed cost per community sentence of £2,400.

Table 29: additional costs for local authorities per year

<table>
<thead>
<tr>
<th></th>
<th>Low estimate</th>
<th>Best estimate</th>
<th>High estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional community sentences</td>
<td>120</td>
<td>480</td>
<td>1,140</td>
</tr>
<tr>
<td>Additional costs</td>
<td>£280,000</td>
<td>£1,160,000</td>
<td>£2,730,000</td>
</tr>
</tbody>
</table>

235. The costs associated with community sentences are primarily for staff time. This does not translate directly into additional financial cost, but will need to be considered by local authorities as an additional demand in managing staff workloads. This £1,160,000 has therefore been classed as an opportunity cost.

Measures with no or marginal costs

236. The provisions in the Bill in relation to vulnerable adult suspects will be of interest to local authorities but will not entail additional costs as Appropriate Adult Services are provided at present on a non-statutory basis.

237. The other Carloway provisions not mentioned in the previous section are anticipated to have no substantial costs for local authorities.
COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

238. No additional costs have been identified for other bodies, individuals or businesses.

ADDITIONAL INCOME

239. No additional income has been identified from the Bill, though there will be efficiency savings, as set out in the sections on the Bowen provisions and miscellaneous items, which will offset some of the additional costs. Savings in court time from the introduction of a compulsory business meeting (see paragraph 256-259) will reduce some of the costs from additional court time as a result of the removal of the requirement for corroboration (see paragraph 177-182).

PART B – BOWEN PROVISIONS

OUTLINE OF MEASURES

Measures with cost implications

Pre-trial time limits

240. This provision increases the time limit during which a person on remand must be brought to trial from 110 days to 140 days. This has a number of cost implications, as it will increase the prisoner population. This increase has been modelled at 40 extra places at any time.

First diets

241. This section provides that accused persons will be cited to a first diet, at which the trial diet will be set. The trial diet will be set according to the sheriff’s view of the state of preparedness of the parties. This will reduce the problem of citing parties and witnesses to diets which do not proceed, and thus create savings for the police, courts and legal aid budget as well as freeing up court time and reducing inconvenience to those involved.

Duty of prosecution and defence to communicate

242. This provides that prosecution and defence must meet in advance of the first diet to discuss their state of preparedness. Sheriff Principal Bowen described this as a Compulsory Business Meeting (“CBM”). A record will be kept of the meeting and the court must have regard to this record at the first diet. While the cost of preparing this record will fall on the COPFS the process of engagement will reduce the number of diets continued owing to unpreparedness, and indeed reduce the number of cases going to trial, as they are more likely to be resolved by early pleas. This will generate savings.

Plea of guilty

243. This removes the need to sign a plea of guilty. This will generate savings by allowing persons to plead guilty remotely.

Measures with no or marginal costs

244. The other Bowen provisions are anticipated to have no substantial costs.
COSTS ON THE SCOTTISH GOVERNMENT

245. The Bowen provisions are anticipated to have no substantial costs for the Scottish Government.

SCOTTISH POLICE AUTHORITY

246. The SPA will benefit from savings arising from fewer witness citations as a result of more efficient case management and early guilty pleas. Police officers will therefore be required to attend court less often. Over the financial years 2009-12, 56% of all witnesses first cited to sheriff and jury courts were police officers. The requirement on a police officer to attend court as a witness takes an average of 2.43 hours, not including travel time. This average reflects a time requirement that can last from one to six hours.

247. The Review found that, based on the volume of business in 2008-09, if three fewer witnesses were cited per case, there would be about 7,000 fewer witnesses cited overall. If seven fewer witnesses were cited, there would be about 17,000 fewer witnesses cited overall. (The volume of cases is, broadly, 2,400). Applying the average of 56% to these figures, the changes may save approximately 4,000 to 9,500 police witnesses. Again, applying the average time saved of 2.43 hours this would result in estimates of time saved at between 9,700 and 23,000 hours. There will also be savings in witness time arising from the increase in guilty pleas likely to result from engagement between the parties prior to the commencement of proceedings. Using a mid-range estimate of 16,350 gives annual savings of £391,000.

16,350 hours saved x £23.91 hourly cost of a constable = £391,000

248. These savings will consist of police time spared for other activities, rather than money, as the strength of the police establishment will not be reduced. It does, however, balance some of the other demands on police time elsewhere in the Bill, and is recorded here as an opportunity cost saving.

CROWN OFFICE AND PROCURATOR FISCAL SERVICE

249. The Bill will result in savings for COPFS by ensuring that witnesses will only be cited to trial diets which are likely to go ahead thereby reducing citation costs, as well as reimbursement costs.

250. The cost of reimbursing a witness for loss of earnings, expenses etc. falls on COPFS. The amount of expenses witnesses can claim will depend on a range of factors. It is also not known how many fewer witnesses will need to be cited as a result of the changes. This is dependent on the volume of business and the complexity of cases as well as the success of the provisions in reducing the number of witness citations. Applying the range of witnesses saved described in paragraph 247 (7,000-17,000) to its current reimbursement costs, COPFS estimates a saving of approximately £75,000 to £181,000 a year. A mid-range estimate gives financial savings of around £128,000 per annum.
251. COPFS is also responsible for citing witnesses, so it would make savings by the mere fact of citing fewer witnesses. These arise from less time for a Solemn Legal Manager to decide which witnesses to call, and less time for the administrative member of staff actually to cite them. COPFS estimates citation costs at £580 per 1,000 witnesses. On the range shown above, of 7,000-17,000 witnesses saved, this would result in a saving of between £4,000 and £10,000. A mid-range estimate is a saving of £6,000 per annum. For comparison purposes, the numbers of witnesses first cited in sheriff and jury trials in each of the financial years 2009-12 was between 50,000 and 60,000. This saving relates to staff time and is therefore an opportunity cost saving, to be balanced against other opportunity costs for COPFS.

252. COPFS would, however, also have to carry some costs. These costs would arise from the requirement to attend the CBMs, and from preparing a record of these and lodging with the court in advance of the first diet. The work involved, including preparation, is estimated at half a day. The cost would depend on the seniority of the personnel undertaking this work. COPFS believes this would either be a Senior Procurator Fiscal Depute or a Solemn Legal Manager, at a half day’s cost of £178 and £150 respectively. This, however, is based on all CBMs being held by means of a face-to-face meeting. It thus represents a theoretical maximum. In many cases, no such face-to-face meeting will be held and the costs would accordingly be less.

253. CBMs will not need to be held where there is an early guilty plea under the procedure outlined in section 76 of the 1995 Act. However, such a meeting would be held where a plea of guilty is obtained at or around the first diet, or at any rate before the trial. Consequently the number of cases affected is higher than the 2,400 shown above, and has been estimated at about 3,350. This figure multiplied by the staff costs above gives a range of £503,000 to £596,000.

254. This figure is likely, however, to be reduced by a greater incidence of section 76 pleas through the new arrangements. A 5% increase, for example, would result in 118 fewer cases. This would save preparation time of one day overall per case – 118 days’ work. That work is shared among staff whose daily cost ranges from £150 to £357. The savings to offset against the costs of the CBM would therefore fall in a range of £18,000 - £42,000. The Scottish Government anticipates that a 10% increase is more likely, which would result in 236 fewer cases, and savings of between £35,000 and £84,000. A mid-range estimate gives a saving of £60,000.

255. Applying this reduction, and savings from a proportion of CBMs not requiring face-to-face meetings, the Scottish Government estimates additional costs of £370,000 per annum. These additional costs relate to additional demands on staff time. This does not translate directly into additional financial cost, but will be part of general staff workloads. This has therefore been classed as an opportunity cost.

SCOTTISH COURT SERVICE

256. It is anticipated that the proposal to introduce CBMs prior to indictment should result in savings to the courts through an increase in early pleas (because the parties will have engaged before trial) and thus avoidance of the costs of a full trial where evidence is led. It is difficult to predict how many cases will be affected, but SCS has provided estimated savings based on a 5% decrease and a 10% decrease.
257. In 2011-12, a total of 1,128 indictment cases went to trial, according to the SCS Annual Report\textsuperscript{18}. A 5% reduction in cases would be 56 fewer cases, and a 10% reduction would be 113 fewer cases. SCS costs of an individual case are estimated at £11,225 on average. The average cost for SCS of administering a plea is estimated at £187. The cost differential for each early plea is therefore a saving of £11,038. This suggests the following possible savings.

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<th>5% reduction</th>
<th>10% reduction</th>
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<tr>
<td>Savings from early pleas</td>
<td>56 x £11,038 = £623,000</td>
<td>113 x £11,038 = £1,245,000</td>
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258. Following discussion with SCS, it is anticipated that an increase of 10% would be more likely, and this suggests savings of £1,245,000.

259. These savings would not be an actual cost saving, as cuts in staffing levels are unlikely to arise directly through implementation of these provisions. However, these savings will counteract some of the other costs in the Bill, particularly from the removal of the requirement for corroboration. This has therefore been recorded as an opportunity cost saving.

\textbf{SCOTTISH PRISON SERVICE}

260. It is anticipated that costs will arise from the provision which increases the time-limit for the period for which an accused person may be remanded before his or her trial commences from 110 to 140 days. In some cases those imprisoned for this longer period on remand will, as a result, spend a correspondingly shorter period in prison after conviction. While the 100 day limit is currently not infrequently extended, this proposal has nevertheless been modelled as requiring 40 extra remand places even after the increase in cases where an early guilty plea is accepted. This figure would include the part-place in secure accommodation referred to under “Costs of Local Authorities”.

261. The prison service estimates that the annual cost of a prisoner place in 2011-12 was £37,302, so this proposal would result in an increased cost for the SPS of approximately £1,500,000.

262. SPS has indicated that this increase in prisoner can be accommodated within the flexibility that exists in the provision of prison places. There are limits to this flexibility, and long term increases may accelerate the rate that this flexibility is used up. However, on the basis of a steady level of resources being available to SPS, the additional costs set out above are considered opportunity costs.

LEGAL AID FUND

263. The main area which the Scottish Government anticipates will have a financial impact on the Board will be the proposed introduction of CBMs. The current legal aid payment structure is already sufficiently flexible to accommodate the proposed changes. Payment for the work involved in the CBM would be allowable on a time and line basis. Similarly, if counsel is to be involved in these meetings, counsel’s Table of Fees would ideally be revised to accommodate their attendance at CBMs although in the absence of any such changes the Table does, at present, make provision for consultations with COPFS.

264. As with SCS, it is anticipated that the provision which introduces a compulsory business meeting would result in some savings to SLAB through early pleas reducing the need to hold full trials. In the case of SLAB, the savings arising from an increase of 5% in the number of cases currently going to full trial being resolved instead by an early plea, would amount to some £167,000. An increase of 10% would lead to savings of around £334,000. This is not a cost saving, but can be offset against the additional costs for SLAB elsewhere in the Bill.

265. Balanced against this are the anticipated additional costs for SLAB from attendance at CBMs. This is estimated at £658,000 per year, based on the current payment regime and on 9,916 sheriff and jury cases paid in 2011-12. It is expected that a CBM will take place in each case, and last an average of one hour:

- Solicitors’ fees - £603,000
- Counsel’s fees £55,000 (based on a sanction for counsel granted in 2.5% of sheriff and jury cases)
- Total - £658,000.

266. However, these figures represent a theoretical maximum where CBMs are all held face to face. SLAB advise that the costs could be significantly lower if these “meetings” took place in other formats, using video/telephone conferencing or by emails. These are permitted by the Bill, so the costs will be lower. In addition, it is anticipated that the CBM process will avoid adjournments and may lead to earlier settlement being achieved. This would lead to further savings. A 25% reduction in SLAB costs is anticipated as a result of these factors. A revised cost estimate is therefore £493,000 per annum.

COSTS ON LOCAL AUTHORITIES

267. The proposal to increase the time-limit for the period for which an accused person may be remanded before his or her trial commences from 110 to 140 days will increase the number of persons held on remand (see paragraph 240).

268. In particular it could result in the occupation of a place in secure accommodation being occupied 25% of the time. At present there is capacity in the secure estate for further residents, so in the short term there is no anticipated additional cost. However, in the longer term an additional secure accommodation place could be required at the cost of around £225,000 per annum. For the purposes of this financial memorandum, the impact has been estimated at £56,000 per annum (0.25 x £225,000). This is classed as a financial cost as it is anticipated that
the place would use private provision. In the case of remand residents, this is borne by local authorities, and this cost would have to be spread among the local authorities sending individuals to that place.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

269. The requirement to attend CBMs in advance of first diets will create a cost for legal representatives. However, Sheriff Principal Bowen noted that this early engagement was already good practice taking place in some areas of the country. He also observed that the views of all parties were that meaningful engagement prior to first diet removed churn, and that defence agents stated they were willing to engage in early discussion.

270. Accordingly it would appear that many defence agents are willing to undertake this cost, even where they do not undertake it already (though, as noted below, there would be reimbursement on a “time-and-line” basis from the Legal Aid Fund). This willingness to accept CBMs may be explained by the reduction in inconvenience, and cost savings, for defence agents, created by greater efficiency in the disposal of court business.

271. Costs are therefore balanced by savings. In any case they will depend on variables such as distance of meetings from agents’ offices, duration, time spent in preparation etc. They are likely to be marginal, particularly given the Bills flexibility on the manner of holding the CBM.

272. Businesses are likely to experience savings arising from the calling of fewer of their employees as witnesses and (where trials are avoided by early pleas) jurors. Similar savings will arise for the individuals concerned. However, these are marginal and are not quantified.

ADDITIONAL INCOME

273. The Bowen provisions are anticipated to have no additional income beyond the efficiency savings identified above.

PART C – MISCELLANEOUS PROVISIONS

Measures with cost implications

Maximum term for weapons offences

274. Separate offences concerning possession of an article with a blade or point are contained in sections 47, 49, 49A and 49C of the Criminal Law (Consolidation) (Scotland) Act 1995.

275. The Bill increases the maximum penalties available for each of these offences from four years imprisonment to five years imprisonment. For the purpose of this Financial Memorandum, the term ‘handling offensive weapon offences’ is used to cover all the separate offences contained within sections 47, 49, 49A and 49C of the 1995 Act.

276. The increase in the maximum penalties available for these offences does not mean that the court must impose the new maximum penalties. The court will continue to have absolute
discretion in deciding what an appropriate sentence should be for each individual case within the overall legal framework and within each court’s sentencing powers.

277. It is therefore difficult to estimate with certainty what the impact will be of increasing the maximum penalties for these offences. The information provided below is a best estimate of the financial impact of the increase in the maximum penalties but should be treated with caution given the difficulties in accurately assessing the impact of how courts will decide to use higher maximum penalties in individual cases, if at all.

Scottish Prison Service

278. The Scottish Government anticipates that an increase in the maximum penalty for these offences is likely to have an impact on the sentencing behaviour of Scottish courts.

279. Sentencing data for 2011-12\(^\text{19}\) shows that:
- the number of people convicted of these offences was 2,276;
- the number of these people who received a custodial sentence for these offences was 805;
- the percentage of those people who received a custodial sentence was 35%; and
- the average custodial sentence length for these offences was 311 days\(^\text{20}\).

280. There are relatively few people who currently receive sentences of over two years for these offences (42 in 2011-12). Whilst the impact of an increase in the maximum penalties may be limited to those who currently receive sentences relatively close to the current maximum of four years, a general increase in average sentence levels might occur.

281. The table below provides figures which demonstrate the effect of a 5% increase in average sentence lengths (the low estimate), a 10% increase in average sentence length (the mid estimate), and a 15% increase in average sentence length (the high estimate). These figures are provided on an illustrative basis to help demonstrate the potential impact of the increase in maximum penalties for these offences. The calculation uses 2011-12 sentencing data as the base values and assumes that the increase in average sentence length occurs in year one.

282. The average annual cost of one prison place is £37,302. This represents the overall cost of running the Scottish Prison Service divided by the design capacity of the prison estate in 2011-12.

283. Under the current statutory early release rules, the additional time spent in prison will be half of the additional period of time by which a sentence has increased. For example, a person

\(^{18}\) [http://www.scotland.gov.uk/Publications/2012/11/5336/0](http://www.scotland.gov.uk/Publications/2012/11/5336/0)

\(^{20}\) The figures given for offences also include a very small number of offences under section 141 and 141A of the Criminal Justice Act 1988. These offences relate to restriction of sale of offensive weapons and account for less than 1% of the figures given. The provisions in this Bill do not affect the maximum penalties for section 141 and 141A offences in the Criminal Justice Act 1988.
receiving an additional ten days onto their sentence as a result of an increase in the overall maximum penalties for an offence will generally spend an additional five days in prison and the figures included within the table below are calculated on that basis.

284. Where an additional period is added to a custodial sentence by a court as a result of increasing the maximum penalties for these offences which then leads to a sentence above four years being imposed (which will now be possible as a result of these provisions), different early release rules operate and the offender is classed as a long term prisoner. A long term prisoner is able to be considered for parole by the Parole Board at the halfway point of their sentence and must be released on non-parole licence at the two-thirds point of their sentence. However, very few offenders currently receive sentences close to the current maximum of four years and the Scottish Government considers it is reasonable to assume that only a handful of offenders, at most, will in the future receive sentences of more than four years and thus trigger the different arrangements for early release.

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<thead>
<tr>
<th>Table 31: handling offensive weapons offenses</th>
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<td></td>
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<tr>
<td>Average custodial sentence</td>
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<tr>
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<tr>
<td>Increase in prison places</td>
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<td>Additional recurring costs</td>
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285. Costs for SPS arising from the increase in length of prison sentences for handling offensive weapons offenses are anticipated to be around £1,250,000 per year.

286. SPS has indicated that this increase can be accommodated within the flexibility that exists in the provision of prison places. There are limits to this flexibility, and long term increases may accelerate the rate that this flexibility is used up. However, on the assumption of a steady level of resources being available to SPS, the additional costs set out above can be considered opportunity costs.

287. No significant additional costs are anticipated to fall on other parts of the Scottish Administration. The increase in the maximum penalties available for handling an offensive weapon offences will not increase the number of prosecutions taken forward each year and so there should be no new costs falling on either COPFS or SCS.

288. It is anticipated that the increase in maximum penalties will help further act as a deterrent to the carrying of offensive weapons and it is therefore possible that savings will accrue in the future in respect of fewer offences being committed, fewer prosecutions being required and therefore fewer court cases being undertaken. Estimates are not provided, however, as it would be difficult to distinguish the direct impact of the increases in maximum penalties leading to fewer offensive weapon offences separate from other policy efforts being undertaken to reduce offensive weapon possession e.g. education campaigns such as ‘No Knives, Better Lives’21.

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TV links

289. The measures in the Bill will allow the use of TV links for first callings from police custody.

290. The initial impact of the Bill can only be estimated at this time as there remains the need to develop the details of any implementation and use of TV links through testing and pilots, which can only be enabled by the provisions in the Bill.

291. The financial implications of the proposals are complex for three reasons. They allow tests to determine the benefits of allowing first callings through the use of TV links. However, until these tests have been run, these benefits cannot be fully assessed. As a result the costings are both estimated and provisional at this stage.

292. Additionally, the costs of the equipment and services needed to run a first calling by video will be-off set by the opportunities to share the equipment for other purposes that will bring additional benefits and efficiency gains, so the costs and benefits will, in any final roll-out, be shared by this joint use. Furthermore, the demands of a modern organisation are such that the use of TV links is integral to successful communication and therefore some related costs would be incurred anyway as part of the routine update of IT equipment.

293. Finally, other activities to improve the efficiency of the criminal justice system will impact upon the issues addressed in the Bill; the number of first callings may be reduced by the additional use of liberation by undertaking by police, for example. Within these parameters, the initial estimates are that the provisions in the Bill, will, if implemented to the fullest extent and at the currently highest estimate, cost £1,332,000 in capital terms. (These costs would cover all existing court rooms in Scotland used for both criminal and civil cases). The management of first callings would also potentially add an estimated £612,000 to the costs across the Criminal Justice Partners. However, it is highly unlikely that these levels will be reached within the first five years of the introduction of the provisions. During the pilot stages, the optimum deployment of TV links for first callings and the opportunities for cost savings will be fully explored. For example, it is likely that there will be additional savings of £67,000 per annum through agents using the equipment to speak to their clients.

294. In the initial stages, it is anticipated that the technology would be installed in 17 courts and eight Primary Custody Suites. The total costs for this are estimated at £124,000 capital costs and staffing costs of £512,000. The pilot phase will allow for a fuller assessment of the appropriate level and configuration of the equipment.

Costs on the Scottish Government

295. There are no direct cost or savings implications for Scottish Government from the changes in the Bill. However, the Scottish Government funds the key justice partners and it is through them that any additional expenditure and savings would be realised.
Scottish Police Authority

296. It is anticipated that costs would arise for SPA as a result of the use of TV links for first callings.

297. The number or units equipped will depend on the pilots. It is anticipated that in the early stages, around eight Primary Custody suites would have TV link technology installed. Capital costs for equipment installation have been estimated at between £4,000 and £10,000 per site. The Scottish Government therefore anticipates capital costs of between £32,000 and £80,000 for SPA. Other uses of the equipment, for example with the NHS in delivering tele-medicine to custody units, and reducing defence agents’ travel to prisons to visit their clients, may be possible.

298. It is anticipated that the use of TV links for first callings will give rise to an increase in management and support costs for dealing with people in custody for a longer period if they are not being brought to court. Police Scotland estimate costs associated with providing detainees with basic requirements in police custody at £180 per day, most of which arises in the first four to six hours of the detention. Additional detention would not give rise to significant additional costs in terms of provisions for the detainee.

299. There has been some work suggesting that the additional cost of management and support for those in detention will be in the order of one to two additional member(s) of staff per site. Based on an estimated eight sites in the initial stages, this would involve up to 16 additional members of staff members, at a cost in the order of £512,000 per annum. These figures will be tested in the initial pilots: again, it is possible that these initial estimates are high.

300. Under these assumptions it is estimated that the cost to Police Scotland will be £80,000 capital and £512,000 staff costs per annum.

Crown Office and Procurator Fiscal Service

301. The proposals will not result in any costs or benefits for COPFS. However, in the longer term, the use of TV links could open the possibility of COPFS being represented remotely thereby saving travel and time costs.

Scottish Court Service

302. The other area where costs will be incurred initially is for SCS. There will be a need to upgrade some existing video equipment and in the longer term replace or install equipment in other court rooms.

303. There are currently 49 Sheriff Court buildings and 5 standalone JP courts. Of these, 45 Sheriff Courts have some TV equipment, whilst none of the standalone JP courts have equipment. Six of the courts (Edinburgh, Glasgow, Kilmarnock, Hamilton, Aberdeen and Dundee) have more than one room fitted with equipment; the rest have one court room. The Supreme Courts have four rooms with existing equipment. To upgrade this equipment would cost in the region of £1,500 per room: a total of £86,000.
304. It is unlikely that there will be a need to install the equipment in all court rooms as part of this programme. Over 50% of first callings from custody are held in 17 courts. Of the 17 busiest sites six already have multiple links. Therefore, in the initial stages of the pilot work, it is unlikely that significant new equipment will be needed in courts. It is anticipated that a further 11 court rooms will need to be equipped at a capital cost of £44,000.

305. Hearings to make determinations on the use of TV links in individual cases may have a small impact on court time. It is anticipated that this will be managed within existing resources.

Scottish Prison Service

306. It is anticipated that in the initial stages there will be a need to install TV link equipment in three prisons. At an estimated cost of between £5,000 and £10,000 per site, this suggests initial capital costs for SPS of between £15,000 and £30,000.

Individuals and businesses

307. The proposals in the Bill do not directly affect defence agents.

308. There will be contracts let to supply, install and run TV equipment as part of the pilots and in the longer term the roll out of the programme. These companies will benefit from this business.

Costs on local authorities

309. Although measures in the Bill will also allow first callings to occur via TV link for children appearing from a place of secure accommodation these would be very small in number. In the initial stages of the proposed pilot work, attention will not focus on children, while fuller costs and benefits can be established.

Costs on other bodies, individuals and businesses

310. There are no cost implications for the legal community from the changes in the Bill. As part of the wider TV links programme, they will be encouraged to visit their clients by such links when in police or prison custody and the equipment installed in the Police Custody Units will facilitate this.

Method of juror citation

311. Among the miscellaneous items in the Bill is a measure to enable SCS to choose the method of citation of jurors. In particular, this is intended to permit jurors to be cited by ordinary post, rather than by recorded delivery.

Costs on Scottish Court Service

312. In November 2012 SCS established that the then difference in unit costs of citation between first class post and recorded delivery (95p) entailed an additional running cost of £169,000 per annum. Up to this amount will therefore be saved by enacting the proposed change.
Measures with no or marginal costs

Sentencing prisoners on early release

313. No significant financial impact is anticipated associated with the provisions relating to sentencing on early release.

People trafficking

314. The introduction of a statutory aggravation for people trafficking is not anticipated to have any substantial financial implications for public, private or third sector bodies, or for individuals.

Police Negotiating Board

315. The final costs of a Police Negotiating Board (PNB) for Scotland will depend on detailed arrangements which have yet to be agreed with stakeholders. However, the Scottish Government expects it to be based on the structure of the current UK PNB. The annual costs of the UK PNB are around £500,000, of which the Scottish Government contributes 10%. A large part of this cost is for travel and overnight accommodation for members.

316. The PNB consists of a Staff Side, representing the Police Federations and staff associations, and an Official Side representing police authorities, police senior management and Ministers. UK PNB has 44 members in total. Each Side has a Side Secretary, an experienced negotiator to represent their interests. The Independent Chair and Deputy Chair provide a neutral voice to assist in bringing the parties to agreement, including informal mediation and conciliation if necessary. An independent secretariat is also provided to support the Chair and Deputy Chair, arrange meetings, circulate papers etc.

317. Based on the current Scottish Standing Committee of the UK PNB, PNB Scotland is expected to have 12 members. Travel and accommodation costs will be very much less than for the UK PNB, as a result of having fewer members and less distance to travel; meetings are likely to be held in the central belt where the majority of members will probably also be based. There are expected to be fewer meetings than UK PNB, because only one Police Service is involved; UK PNB often deals with agreeing a standard approach to issues across different police forces and authorities. This will reduce the cost of daily fees for the Independent Chair, Deputy Chair and Side Secretaries, as well as for travel, accommodation, meeting rooms and catering.

318. On the basis of these assumptions, it is estimated that costs for PNB Scotland will be under £50,000, and in line with the current Scottish Government contribution to UK PNB. There are therefore no additional costs associated with this provision.
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 20 June 2013, the Cabinet secretary for Justice (Kenny MacAskill MSP) made the following statement:

“In my view, the provisions of the Criminal Justice (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 20 June 2013, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Criminal Justice (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
CRIMINAL JUSTICE (SCOTLAND) BILL

EXPLANATORY NOTES
(AND OTHER ACCOMPANYING DOCUMENTS)