Finance Committee

Report on The Financial Memorandum of the Criminal Justice (Scotland) Bill

The Committee reports to the Justice Committee as follows—

INTRODUCTION

1. The **Criminal Justice (Scotland) Bill** (the Bill) was introduced by the Scottish Government (the Government) on 20 June 2013.

2. The Policy Memorandum states that the Bill—

   “is the legislative vehicle to take forward the next stage of essential reforms to the Scottish criminal justice system to enhance efficiency and bring the appropriate balance to the justice system so that rights are protected whilst ensuring effective access to justice for victims of crime.”

3. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s Financial Memorandum (FM). In doing so, it is required to consider any views submitted to it by the Finance Committee (“the Committee”).

4. In July 2013, the Committee agreed to invite a range of organisations potentially affected by the Bill to submit written evidence.

5. A total of 16 pieces of written evidence along with a further two supplementary submissions were received. All written submissions can be accessed via the Committee’s website at: [http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/65990.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/65990.aspx).

6. The Committee also received a [letter from the Cabinet Secretary for Justice](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29824.aspx) (dated 18 November 2013) drawing its attention to planned increases in funding relating to certain provisions within the Bill which had not been reflected in the FM.

7. At its meeting on 20 November 2013 the Committee took evidence on the FM from the Government Bill Team.


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1. [Criminal Justice (Scotland) Bill, Policy Memorandum, paragraph 3](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/65990.aspx)
9. Following the evidence session, the Committee received a letter from the Bill Team dated 3 December, providing further information on the FM.

THE FINANCIAL MEMORANDUM

10. The FM states that 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.

11. The FM states that the Bill’s financial implications 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). It goes on to state that “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...the Bowen and miscellaneous provisions on the whole have lower financial costs.”

Total financial costs

12. A table summarising the “total financial costs by organisation” (Table 2) is provided after paragraph 11. Table 4 then breaks down the “total financial costs by Bill provision” and suggests that between 2015-16 and 2018-19 the Bill will result in total recurring costs of £6.587 million per annum, and in non-recurring costs of £2.703 million and £1.648 million in 2015-16 and 2016-17 respectively.

13. When asked in oral evidence whether it envisaged any further non-recurring costs after 2016-17, the Bill Team explained that these costs were “primarily police capital costs for additional interview rooms” which had been “based on what the police told us.”

Total opportunity costs

14. The FM provides a table after paragraph 11 summarising “total opportunity costs by organisation” (Table 3). Table 5 then breaks down the “total opportunity costs by Bill provision” and suggests that such opportunity costs are expected to amount to between £26.685 million and £34.748 million in each of the years between 2015-16 and 2018-19.

Opportunity Costs

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2 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 10
3 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 11
5 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 11
6 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 11
15. During the Committee’s scrutiny of the FM it became apparent that a key, overarching theme was the FM’s use of opportunity costs. Whilst certain opportunity costs could be specifically attributed to either the Carloway or Bowen provisions (and where appropriate, are considered under these respective headings below), a significant part of the oral evidence session focussed on a more general discussion relating to the Bill Team’s definition and usage of the term.

16. The Bill Team explained that the FM differentiated between financial costs and opportunity costs, stating—

“We consider opportunity costs to be the impacts on staff time and other existing resources that can be managed through measures such as prioritisation of functions and increased operational efficiency.”

17. It further explained that—

“Where a new process has been identified or an increase in volumes of cases has been predicted, and where the impact of that has been spread throughout Scotland in such a way that it is manageable within existing resources, that is classified as an opportunity cost.”

18. The Bill Team stated that “a lot of what is in the Bill is business as usual for many bodies”, but that business might need to be reorganised to absorb the changes. It pointed out that the new processes being introduced “are not being layered on top of old processes; they are replacing what is in place already.”

19. In summary, the Bill Team stated—

“I suspect that that is a more cogent explanation of opportunity cost - it is what we expect to be done in the normal course of business as usual, even though we are facing a significant change management exercise.”

20. In response to the suggestion that this appeared to differ from the standard definition of an opportunity cost and that the FM seemed “to be using the term almost as a code for efficiency savings” the Bill Team stated—

“although everyone in central or local government is being asked to look for efficiency savings, that is not the core of the opportunity costs as we use the term in the financial memorandum. The general expectation on bodies is that they will make efficiencies, but we are not necessarily offsetting new costs

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against efficiencies. A lot of these costs are not new; instead, they are
resources that are being used for something different.”

21. When asked whether certain activities might therefore not be able to be
undertaken as a result of changes stemming from the Bill, the Bill Team gave the
example of police training costs totalling around £9.8 million (as noted in paragraph
128 of the FM). It explained that, had the training been carried out in 2014-15 as
originally planned, it would have resulted in real costs relating to the requirement for
backfilling and overtime. However, it stated that, as a result of changing the
implementation date to allow the training to take place in 2015-16—

“the police have indicated that they will be able to spread the training across the
year in a way that ensures that it can be accommodated in normal police time
and will not require any backfilling or overtime.”

22. Noting that the FM estimated a recurring opportunity cost to the SPS of £22.75
million per annum by 2018-19, the Bill Team explained that it had used an average
figure of £37,000 per prisoner but that this did not mean that the cost of incarcerating
one additional prisoner would amount to the same sum. It explained that—

“The cost of putting an extra 200 or 300 people in prison per year will not be
£37,000 each; it will be the amount that it costs to feed those extra prisoners
and the various direct costs that are attributable to their being in prison.”

23. The Bill Team further explained that—

“The indication that we have had from prisons is that the costs of an extra 200-
odd prisoners are already largely included in what have been put forward as the
annual prison running costs. The prison running costs include some flexibility
for prisoner numbers going up or down on an annual basis. That is why, in
previous years, prisons have had underspends during the year. Running costs
have been slightly lower than had been anticipated because prisoner numbers
have been slightly lower.”

24. When it was suggested to the Bill Team that it might be possible to disguise
costs in any FM by arguing that they could all be absorbed, it agreed “that that could
lead to our trying to badge everything as an opportunity cost, which would be
misleading.”

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25. However, the Bill Team explained that this was the reason why it had “been careful to agree the opportunity costs with our partners”, noting that “when they have felt that there would be an additional financial cost, our partners have been vocal.”

26. The Bill Team further stated that “had we called many of those costs financial costs that would not have been transparent, either. We are not spending £10 million on training police officers specifically for the bill. That training will form part of their normal in-year training.”

27. When asked whether it had identified what training, tasks or normal duties would not be undertaken to enable police officers to attend training courses required as a result of the Bill, the Bill Team stated that, whilst “it would be for the individual agencies to comment in detail on what they would and would not do”, it had discussed detailed implementation plans with them. It stated that this process was continuing but pointed out that “We are talking about the financial year 2015-16, which is quite far ahead to be thinking about training and workload issues.”

28. Responding to suggestions that such issues would have had to be considered in order to inform the long-term cost implications provided in the FM, the Bill Team agreed that this was the case and that the training had been modelled but that “we might not have to look at the exact detail of which training courses police officers will or will not go on.”

29. In response to questions relating to the apparent upwards trajectory of predicted opportunity costs for the SPS as provided in table 3 of the FM (rising from £6.85 million in in 2015-16 to £14.6 million and £18.65 million in 2016-17 and 2017-18 respectively, and to £22.75 million in 2018-19) and whether these opportunity costs must, at some point, become real financial costs, the Bill Team replied—

“I can see how the table is slightly misleading. The figure for 2018-19 is for the Bill’s full impact, and we expect the figure to be at that level from then onwards. The figures are staggered in that way because they are modelling prison sentences that might be several years long. In the first year there would be additional sentences, whereas in the second year there would be additional sentences but also people continuing to serve the sentences that were brought in in the first year. That is why the figures ramp up to a particular level, which we expect to be the long-term level.”

30. When asked how this assumption might be affected by prison sentences of longer than three years, the Bill Team acknowledged that this was “not an exact science”, but stated—


“I think that the figure was reached using an average prison sentence of eight years; therefore, it will take four years to reach the average level. After four years, people will start to leave prison who went into it as a result of the Bill, and our analysts suggested that that is where the figures will start to level out.”22

31. West Dunbartonshire Council stated that the FM’s estimate of an additional cost of £1.244 million in additional demand for social workers appeared to be “the result of a series of informed guesses” and that the assumption that it would result in opportunity costs—

“appears to have been arrived at on the basis of no evidence whatsoever; including, very importantly, the capacity of local authorities to make decisions regarding the allocation of staff time to accommodate new work arising as a result of the consequences of legislation and over which we have little or no control. This would bear an interpretation of additional costs, joining a lengthening list of unfunded additional demands on the local authority.”23

32. West Dunbartonshire Council went on to state that the additional financial burdens arising from the Bill “should be funded in full by the Scottish Government through an additional funding allocation.”24

33. Fife Council stated “we recognise that opportunity costs could become actual costs and would need to revisit these issues should demand increase to such an extent that would detract from the aim of the Bill to modernise and enhance efficiency.”25

34. The Association of Scottish Police Superintendents (ASPS) stated in written evidence that “much of the costs are classed as opportunity costs and I would advise close scrutiny of these in the wider context of police reform.” It further stated—

“It is my understanding that the Police Service of Scotland must subsequently achieve year on year real financial savings due to the annually reducing budget and that therefore the opportunity to use resources “freed up” by efficiency savings is questionable. It is a more likely scenario that resources “freed up” have to be offered Early Retirement (ER), Voluntary Retirement (VR) or redeployed to fill gaps arising from ER and VR wherever possible.”26

35. When asked directly if the Government was prepared to give a commitment to reviewing costs in the future “in the light of experience so that any marked increase could be funded” by it, as suggested by Falkirk Council, the Bill Team stated—

23 West Dunbartonshire Council. Written submission, paragraph 5
24 West Dunbartonshire Council. Written submission, paragraph 7
25 Fife Council. Written submission, paragraph 10
26 The Association of Scottish Police Superintendents. Written submission, paragraph 16
“Yes. We will certainly be monitoring the bill’s impact and maintaining communication with the key bodies.”

36. The Bill Team reiterated this undertaking in its letter of 3 December stating that it was “in the process of developing detailed implementation plans with key partners, and will maintain close communication with these bodies up to and beyond the Bill’s provisions coming into effect.”

37. The Committee is concerned about the lack of clarity regarding the usage of the term “opportunity costs” within the FM.

38. The Committee notes the view of some witnesses that these opportunity costs could become actual costs and recommends that the lead committee asks the Cabinet Secretary for Justice to confirm that these costs will be fully funded.

39. The Committee recommends that the Government publishes periodic updates on the costs of the Bill, including the “opportunity costs.”

Part A – Carloway Provisions

Costs on the Scottish Administration (paragraphs 43 - 226)

40. The FM states that “costs on the Scottish Administration will fall on the Scottish Government, SPA, COPFS, SCS, SPS and the Legal Aid Fund….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.”

Removal of requirement for corroboration

41. The Bill removes the current requirement for corroboration in criminal cases. The FM states that Police Scotland and COPFS conducted “shadow reporting and shadow marking exercises” which suggested this would be likely to result in increases in the number of cases reported by the police to COPFS and in the number of cases prosecuted by COPFS.

42. The FM states that “an increase in prosecutions would have potential cost implications for SPA, COPFS, SLAB and SCS in terms of increased workload.” As additional prosecutions are likely to lead to additional convictions and therefore to additional custodial and community sentences, the FM states that this would also impact on the SPS and on local authorities.

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28 Scottish Government Bill team letter
29 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 43
30 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 32
31 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 34
43. On the basis of the shadow exercises, the FM predicts that the increase in police reports to COPFS would be likely to be in the range of 1.5 – 2.2% with a “most likely estimate of 1.5%.”

44. The FM also predicts that the resultant change in the number of summary prosecutions would be in the range of a 1% decrease to a 4% increase, “with a best estimate of a 1% increase.” Solemn prosecutions are predicted to increase by between 2% and 10%, “with a best estimate of a 6% increase.”

45. Taken cumulatively, the FM’s “best estimate” is that there would be a 2.5% increase in summary prosecutions and a 7.6% increase in solemn ones.

46. The Faculty of Advocates (“The Faculty”) stated that the FM did “not provide sufficient information on these exercises to allow for meaningful comment” and that “even if the results of the shadow exercises…are to be regarded as reliable, there are reasons…to believe that the analysis in the FM understates the resources implications.” The Faculty also suggested that it was unrealistic to treat additional costs as opportunity costs.

47. The Faculty stated that the predicted increase in the numbers of prosecutions was “surprisingly small”. It also suggested that—

“the cohort of “additional” cases is likely to contain a significantly higher proportion of sexual offences than the current caseload, and, in particular, to include a higher proportion of cases in which the case will essentially turn on an assessment of the complainer’s evidence against an assessment of the accused’s evidence. Such cases are significantly more likely to go to trial rather than to be resolved by a plea, yet it would appear (para. 180) that no allowance for this has been made in the assessment of the additional costs.”

48. The Faculty went on to state that, as noted in the FM, “the average plea costs 1.5% of the average case going to trial” and pointed out that an increase in prosecutions for rape would impact disproportionately on the High Court.

49. The Faculty’s submission further noted that increases in the numbers of prosecutions (over and above those predicted in the FM) would have a resultant impact on those organisations listed above. It stated that “the Legal Aid Board does not appear to have included any estimate for costs attributable to additional appeals generated by the change in the law. This contrasts with COPFS, which has made an allowance for this in the first three years of the new regime.”

50. When questioned on this point by the Committee, the Bill Team stated that this was due to the fact that COPFS had specifically raised this point (and had been able...

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32 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 32
33 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 32
34 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 33
35 The Faculty of Advocates. Written submission, paragraph 5
36 The Faculty of Advocates. Written submission, paragraph 24
37 The Faculty of Advocates. Written submission, paragraph 24
38 The Faculty of Advocates. Written submission, paragraph 33

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to provide evidence) but “the issue was not raised with us by any of the other agencies, so we felt that it would be specific to the work of that team and we have not looked at it in other areas.” It further stated, however, that “It would not be standard for the financial memorandum to say that there will be more appeals because we are changing the law.”

51. The Committee invites the lead committee to seek clarification of the reason why it would not be standard for a projected increase in the number of appeals resulting of the Bill to be included in the FM.

52. When it was suggested that a potential increase in the number of appeals must have some financial implication for organisations other than COPFS, the Bill Team stated that it “did not have sufficiently robust evidence to suggest that there would be an increase in the number of appeals across the board.” It gave an undertaking, however, to “have conversations with other agencies” and to “get back” to the Committee on this point.

53. In its letter of 3 December, the Bill Team stated—

“If there is an overall increase in appeals, that will impact on the legal aid fund, as pointed out by the Faculty of Advocates. The legal aid fund is a demand-led fund, and the Scottish Government has undertaken to meet all associated demand-led costs. We will monitor the impact of the Bill on the legal aid fund, and funding will be available to cover any increases as a result of this Bill.”

54. The letter further stated that the potential for a related impact on the SCS had also been considered and that the Government and the SCS had agreed that any short-term increase in appeals could be managed within existing resources.

55. The Committee welcomes the Government’s commitment to monitoring the impact of the Bill on the legal aid fund and making additional funding available if required.

56. In their joint submission, Police Scotland and the SPA provided greater details on the basis for their shadow marking exercises. Having concluded these exercises, their submission stated that two points had become apparent in relation to the volume of reports to COPFS—

- “There is no great volume of unreported matters, where a named suspect is known to the police, which would be likely to ‘swamp’ the justice system should the rules on evidence be amended as indicated; and
- In almost all matters where there is any degree of supporting evidence, the police will tend to report under the current regime, particularly in serious allegations.”

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41 Scottish Government Bill team letter
42 Police Scotland and the Scottish Police Authority. Written submission, paragraph 31
57. In written evidence, COPFS stated that it was “content that the estimated costs and savings set out in the Financial Memorandum (as they apply to COPFS) are reasonable and are as accurate as possible in respect of the time periods considered.” It also subsequently provided greater detail of the basis for its shadow marking exercise in supplementary written evidence before offering to provide further details to the Committee should it so require.

58. In oral evidence, the Bill Team acknowledged the “reasonable point” that the published FM had not provided “a huge amount of detail” on COPFS’ shadow exercise, but pointed out that further detail had subsequently been provided in its supplementary written evidence. Noting that the Faculty had “also stated that, overall, the Financial Memorandum is a reasonable summary of costs”, the Bill Team confirmed that, in its view, the shadow exercise was “quite a robust way of evidencing the estimates. We feel that the estimates are strong and reliable.”

59. Later in the meeting it expanded on this point stating—

“The exercise that was undertaken was absolutely robust and thorough. Perhaps the description of it in the financial memorandum was not as detailed as it might have been, but the additional information that the Crown Office has now presented gives a good picture of the thorough investigation that occurred.”

60. The Bill Team also highlighted that it had “conducted a detailed exercise on the back of the shadow marking exercise” and had undertaken “an analytical exercise based on existing models for predicting impacts.”

61. The Committee notes that a more detailed description of the basis for the shadow marking exercise was provided in supplementary written evidence. However, it asks why this was not originally included in the FM in order to facilitate proper scrutiny of the estimated costs.

62. The Bill Team further explained that the FM’s estimates were “in most instances, a range of possible outcomes within which we have indicated a best estimate” and that, unless otherwise indicated, these best estimates had been based on “the professional experience and judgment of the various bodies involved.” It confirmed that this was the methodology which informed the Government’s planned timetable for implementation and stated that “a full plan will be prepared once the final terms of the Bill are known.”

63. The Bill Team later stated that it had “identified where there are additional costs for which we need to provide extra funding”, but that it expected “the police and

courts to be able to deal with the business that arises from the changes, by and large, as normal.” Expanding on this point, it stated—

“We are talking about increased volumes of between 1 and 6 per cent at the serious end, so we do not expect an overwhelming amount of additional casework as a result of the Bill. The Crown Office has confirmed that in its evidence.”

64. In response to questions regarding whether any increase in rape convictions might result in future savings by reducing the crime rate over time, the Bill Team agreed that this was a policy objective but that any such future savings had not been quantified in the FM as the period which it covered was “too short to take account of that kind of effect.”

65. When asked whether, conversely, it was possible that removal of the requirement for corroboration might result in fewer convictions and therefore, in savings, the Bill Team acknowledged that “arguments can be made about the impact on the conviction rate. Some argue that the rate might be lower and some argue that it might be higher.”

66. The Bill Team explained that the FM’s calculations had been based on existing conviction rates “simply because that is the best evidence that we have available”, “because we felt that anything else would be speculation”. However, it also stated that it had “worked in other factors” including Lord Carloway’s analysis of the types of cases that would go forward, and it “built that into the model of the additional cases that will proceed.”

67. When questioned specifically about the Bill’s potential impact on the SPS, the Bill Team explained that, whilst a number of factors could be expected to impact on the size of the prison population, the SPS had stated that “in the short term, the estimates set out in the Financial Memorandum are manageable within capacity.”

**Forensic Services**

68. The SPA/Police Scotland submission stated that—

“The impact of the Bill will compel the Police Service to change and introduce new working practices that will impact on Forensic Services. This will affect the number of cases forensic services are required to examine which would be over and above our current demand as well as the impact on us having to examine more cases in a shorter timeframe.”

69. It provided a table estimating that a 2% increase in its forensic services workload would result in increased costs to Police Scotland of £529,000 per annum

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54 Police Scotland and the Scottish Police Authority. Written submission, paragraph 9
whilst a 4% increase would result in increased costs of £1,056,000. In the Cabinet Secretary's letter of 18 November, he explained that these potential increased costs had not been raised during the FM’s development but that following discussions between his officials and Forensic Services, “it has been agreed that the most likely impact is a 2% increase, at a cost of £529,000 per year.”

70. The Committee welcomes the provision of this additional funding but questions why this requirement was not highlighted during the original consultation.

71. Both ASPS and the SPA/Police Scotland submissions made the point that the police will need to invest in new ways of working as a result of the Bill. ASPS stated that, whilst it appreciated that police ICT costs to support the changes were incorporated in the wider police ICT investment programme, “some reference should be made (in the FM) to the ICT cost that is attributable to this Bill, in order that this is captured and understood for the future, without wishing to raise a risk of “double counting.”

72. With regard to opportunity costs, the Faculty stated—

“In characterizing the additional costs to the Court Service as “opportunity costs” the FM relies on savings in court time which it is anticipated will be achieved by the Bowen proposals. Since those proposals relate to solemn cases prosecuted in the sheriff court, it is difficult to see how they could be relevant to the High Court. While a trial is running the court staff and other court facilities cannot be otherwise used and it is, for that reason, open to question whether the additional costs to the Court Service should be characterized as “opportunity costs”, which can be absorbed through efficiency savings.”

73. In response to questioning on this point, the Bill Team confirmed that the proposals would impact on sheriff courts but stated that it had “developed the estimates in close co-working with the Scottish Court Service, which has indicated to us that it is able to accommodate those within existing resources.” It further pointed out that the SCS had indicated this to be the case in its written submission.

Costs on local authorities (paragraphs 227 - 237)

74. The FM states that “the provisions relating to child suspects will potentially bring new costs to local authorities,” whilst “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.”

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55 Cabinet Secretary for Justice letter
56 Association of Scottish Police Superintendents. Written submission, paragraph 13
57 The Faculty of Advocates. Written submission, paragraph 31
59 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 227
60 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 231
75. The FM estimates that these provisions will result in total recurring opportunity costs of £1.244 million for local authorities and provides a more detailed description of the basis for this estimate in paragraphs 227 to 237.

76. The FM’s “best estimate” is that the Bill would result in 480 additional community sentences per year at a total cost of £1,160,000. However, it states that, as costs associated with these would primarily relate to 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.”

77. Falkirk Council suggested that the removal of the requirement for corroboration would be likely to result in an increased number of community sentences and that this would have implications for “already overstretched criminal justice social workers.” It stated that it believed the Government’s estimates “to be flawed in relation to an expectation that this extra work can be subsumed within existing resources” and that the Bill would result in increased staffing costs for local authorities.

78. West Dunbartonshire Council stated that “the potential increase for Community Payback Orders is also likely to increase demand on criminal justice staff – with no financial contribution provided.”

79. Renfrewshire Council also stated that it would find it “very difficult to absorb this additional workload without additional resources,” pointing out that it was already absorbing significant increases in supervision and unpaid work orders subsequent to the introduction of Community Payback Orders without any additional funding.

80. A number of local authorities also drew attention to the potential for an increased number of social work reports arising from the removal of the requirement for corroboration. Dundee City Council, for example, stated—

“We do not believe that all the potential additional costs have been accurately reflected in the FM. No consideration has been given to the potential increased volume of Social Work reports as a result of an increase in the number of prosecutions and associated requests for Social Work court reports. The FM assumes that the costs of supporting additional community sentences will not translate directly into additional financial cost but will be an additional demand in managing workloads.”

81. Similarly, Fife Council stated—

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61 Criminal Justice (Scotland) Bill, Financial Memorandum, paragraph 54
62 Falkirk Council. Written submission, paragraph 9
63 Falkirk Council. Written submission, paragraph 11
64 West Dunbartonshire Council. Written submission, paragraph 10
65 Renfrewshire Council. Written submission, paragraph 4
66 Dundee Council. Written submission, paragraph 4
“We note the potential increase in workload from increased Community Sentencing and would anticipate additional costs could be attached to Local Authorities in the preparation of Criminal Justice and other associated reports as well as placing an increased demand on services providing community based statutory supervision.”

82. In response to questioning from the Committee relating to the FM’s “best estimate” of an additional 480 additional community sentences per year, the Bill Team explained that this figure would amount to an increase of around 2.8% which could be considered to result in opportunity costs which “are manageable because the workloads of social workers and other relevant agencies can be repositioned.”

83. When asked what percentage increase in community sentences might be needed before it would result in additional financial costs for local authorities, such as the need to recruit additional staff, the Bill Team stated that it did not have the calculations to hand, but—

“In the discussions that were had, the feeling was that the potential increase was not anywhere near enough for there to be a cost. Even when we looked at the figures at the high end of the range and divided the cases across all the various authorities in Scotland, the numbers did not come out high enough for there to be an absolute need to recruit additional staff. It was felt that the potential additional cases could be managed by current staff levels.”

84. The Committee invites the lead committee to seek clarification from the Cabinet Secretary for Justice as to what percentage increase in community sentences would be required in order to result in financial costs according to Government calculations.

85. The Bill Team also explained that it had developed the FM’s estimates “through consultation with COSLA and ADSW” and not through discussions with individual local authorities. It stated that it was “therefore understandable that a small number of local authorities might not completely hold the same views as those bodies” and further noted that local authority submissions to the Committee were “not unanimous in the positions that they present.”

86. The Convener suggested that, whilst he understood that COSLA had been consulted as the umbrella body, it appeared that some local authorities felt that their concerns had not been addressed. However, the Bill Team stated that these concerns had not been raised during the production of the FM and that it stood by the FM’s estimates with regard to opportunity costs. It further stated that it had “calculated the costs on a Scotland-wide basis” and that its information “strongly

67 Fife Council. Written submission, paragraph 9
suggests that there will be no great impact on any particular local authority and that, therefore, the proposals can be absorbed within current allocations of staff.”  

87. Nevertheless, the Bill Team undertook to respond to the Committee “by letter on the various issues that local authorities have highlighted so that we can reassure you on each and every one.”  

88. In this letter, the Bill Team explained that “these costs would arise in the context of substantial decreases in crime rates in Scotland in recent years, as well as a range of policy initiatives designed to reduce reoffending.” It further pointed out that the Government “had protected the overall community justice budget, including funding within that for community sentences” before stating that the 2014-15 draft budget contained an increase of £500,000 in cash terms (it is not clear from the letter whether this increase relates specifically to funding for community sentences or to the wider community justice budget).  

89. The letter also stated that the Government had provided additional flexibility to local authorities and that it was for them to allocate funding on the basis of local need. As any additional costs would be “spread across the country and represent a small percentage increase,” the letter states “that in the context of reducing crime rates and the additional funding commitment, this work can be managed within existing resources.”  

90. Similarly, when specifically asked why some local authorities felt that increased volumes of social work reports did not appear to have been considered in the FM, the Bill Team stated that it had consulted in good faith and that “the concern about social work reports was not raised with us when we produced the memorandum, so it is not reflected in it.” It also confirmed that “the submissions have not caused us to move away from what has been said already” and that it understood the FM’s position to be correct.  

91. Expanding on this point in writing, the Bill Team noted that social work reports were not mandatory in all cases. Again it pointed towards “substantial decreases in crime rates” and stated that, in this context, a small increase in the number of social work reports spread across the country “would be manageable within existing resources.”  

92. On a separate point, with regard to the concerns of certain local authorities, the Bill Team suggested that—

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73 Scottish Government Bill team letter  
74 Scottish Government Bill team letter  
76 Scottish Government Bill team letter
“Some of the local authority submissions assume that certain things will happen under the Bill that are not necessarily provided for in it and that are not intended to be provided for in it.”

93. When asked to elaborate on this suggestion, the Bill Team offered to do so in writing. However, when the subject of the provision of appropriate adults arose later in the evidence session (see paragraphs 95 to 98 below), it became clear that this was the topic to which the Bill Team had referred and that further information in writing on this point would no longer be required.

94. The Committee invites the lead committee to ask whether both COSLA and individual local authorities were invited to respond to the consultation or whether COSLA was simply invited to respond on behalf of all local authorities in Scotland. If all local authorities were not invited to respond, the Committee invites the lead committee to ask why they were not invited to do so.

Vulnerable adult and child suspects

95. Where the police assess an individual as being “vulnerable”, the Bill would require them to secure the attendance of an Appropriate Adult as soon as reasonably practicable after detention and prior to questioning. The FM states that these provisions “will not entail additional costs as Appropriate Adult Services are provided at present on a non-statutory basis.”

96. However, a number of local authorities questioned this assumption. Aberdeenshire Council, for example, stated that at present, social workers undertake the role on a voluntary basis and that training costs for volunteers total £5,000 per annum. In the event that the provision of appropriate adults became a statutory duty for local authorities, it suggested that the requirement to ensure they are available 24 hours a day would mean that social work backfill and additional funding for training would be necessary. It stated that—

“The likely cost of backfill would be 1 x peripatetic social worker post and likely cost of increased coordination would be 1/2 post coordinator to Coordination referrals, appropriate adult training and awareness. So overall cost approx £65k per year.”

97. In oral evidence, the Bill Team confirmed that the Government had “no intention of making that provision statutory”, and stated that, as the Bill as introduced did not make the provision of appropriate adults a statutory requirement, no related costings had been included in the FM. It further stated that it had an agreement with COSLA that practices regarding the provision of appropriate adults would not alter as a result of the Bill and, therefore, no additional costs relating to this provision were expected. It did undertake however, to “carefully monitor how the Bill is implemented” and would “react if there are, in fact, changes.”

78 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 236
79 Aberdeenshire Council. Written submission, paragraph 5
98. The Bill Team provided further clarification in its letter of 3 December, confirming that “the Bill does not introduce a new appropriate adult scheme, and it does not change the role of either the police or the appropriate adult.”\(^{81}\) Therefore, it suggested that “the concern raised by Aberdeenshire Council in particular seems to come from a misunderstanding of the effect of the Bill.”

99. The letter did confirm, however, that the Government had “made a specific commitment to COSLA to review the impact of the Bill in relation to vulnerable adults after implementation.”\(^{82}\)

100. The Committee welcomes this commitment to reviewing the impact of the Bill in relation to vulnerable adults after implementation.

101. Currently children aged 16 or under who are detained have the right to access to an adult named by them in advance of and during an interview. The Bill extends this right to those aged 18 or under. The FM predicts that “in the great majority of cases such support is likely to be sought from people known to the suspect”\(^{83}\) (such as friends or family members) but that there will be cases where support is sought from a social worker instead.

102. The FM suggests that the most likely proportion of cases where the services of a social worker would be requested would be 10% of cases (around 800 cases per year). It estimates that this would result in additional annual costs per year for local authorities of £84,000 but that this would be an opportunity cost as it would form part of a social worker’s general workload.

103. Falkirk Council, however, stated that “it is difficult to understand what formula the Scottish Government has used to base their calculation on that 10% of young people will need this.”\(^{84}\) It stated that it knows “anecdotally” “that many young people (particularly those who have been previously looked after) seek this support from social workers” and that the potential impact on its resources was therefore “very difficult to quantify or predict” at this stage.

104. The Bill Team addressed this subject in its letter of 3 December, stating that consultation with ACPOS, ADSW and COSLA had resulted in the assumption that “only a small proportion of 16 and 17 year olds would want to seek support from a social worker.”\(^{85}\)

105. The letter reiterated the basis for the FM’s “best estimate” of additional costs totalling £84,000 per year across Scotland and stated that, in the context of falling rates of youth crime, this increase “would be manageable within existing resources.”\(^{86}\)

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\(^{81}\) [Scottish Government Bill team letter](#)
\(^{82}\) [Scottish Government Bill team letter](#)
\(^{83}\) [Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 163](#)
\(^{84}\) [Falkirk Council. Written submission, paragraph 8](#)
\(^{85}\) [Scottish Government Bill team letter](#)
\(^{86}\) [Scottish Government Bill team letter](#)
Legal Advice

106. With regard to Grants of Advice and Assistance, the Law Society stated that “the existing funding arrangements for solicitors carrying out police station work are inadequate and need to be reviewed”\(^\text{87}\) and that “funding mechanisms for this work are not structured appropriately and the rates are unduly limited.”

107. Noting that SLAB had confirmed that the Government intended to review the payment mechanism as part of its work on the Bill, the Law Society stated that it would encourage this review to take place as soon as possible and that it would be keen to engage with it.

108. The Law Society also noted that the Bill would provide for police questioning after charge and that there would be a right of access to a solicitor for such questioning. It pointed out that on the basis of the FM, it appeared that all additional work relating to this would go unpaid and that, in its view, it was not appropriate for the Government to expect such work to go unremunerated.

109. In his letter of 18 November, the Cabinet Secretary stated that whilst SLAB had provided estimates in relation to this point, they had “unfortunately”\(^\text{88}\) been overlooked during the drafting of the FM and that this would now be remedied. The additional anticipated cost of this was stated as being £34,000 per year. (KM letter)

Part B – Bowen Provisions

110. Following Sheriff Bowen’s Independent Review of Sheriff and Jury Procedure, the Bill makes provision for a number of changes to the operation of sheriff and jury business, including increasing the period on which a person may be held on remand from 110 to 140 days.

Costs on the Scottish Administration (paragraphs 245 – 266)

111. The FM provides a description of the estimated cost implications of the Bowen provisions on a number of organisations as follows—

- SPA (paragraphs 246 – 248) - £391,000 per annum in savings.
- COPFS (paragraphs 249 – 255) - £370,000 per annum in additional costs.
- SCS (paragraphs 256 – 259) - £1.245 million per annum in savings.
- SPS (paragraphs 260 – 262) - £1.5 million per annum in additional costs.
- SLAB (paragraphs 263 – 266) - £493,000 per annum in additional costs.

Costs on local authorities (paragraphs 267 – 268)

112. The FM states that 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.”\(^\text{89}\) The FM then estimates that this increase “could result in the occupation of a place in secure

\(^{87}\) The Law Society of Scotland. Written submission, paragraph 25
\(^{88}\) Cabinet Secretary for Justice letter
\(^{89}\) Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 267
accommodation being occupied 25% of the time”90 which, it states, would result in increased (shared) costs to local authorities of £56,000 per annum.

113. A number of local authorities questioned this estimate in written evidence. Renfrewshire Council, for example, stated that the weekly cost of a placement was currently £5,412, meaning that the additional annual cost of a 30 day increase to it alone would amount to £69,583. It further stated that the FM’s assertion that the additional cost would be shared amongst local authorities was flawed as—

“local authorities adhere to a financial framework where service requirements are purchased by spot placements on a needs required basis and not block placements and individual local authorities bear the costs. Therefore authorities will not have spare capacity to accommodate and will not be able to spread the costs among authorities.”91

114. West Dunbartonshire Council also queried the FM’s estimate stating—

“How this translates into the stated additional need for a single additional secure accommodation place is not clear at all, and especially as the FM then states at Para 268 that this place is anticipated to be required only 25% of the time. This logic seems to contradict Para 230 which talks about 40 extra remand places at any time. The logic seems to suggest that at any point in time that 39.75 of these places will be within the SPS provision (or elsewhere).”92

115. Whilst Falkirk Council stated—

“We believe the impact of this cannot be estimated but has the potential for very large costs for local authorities. There is the possibility that the courts may view secure care as the first option for 16/17 year olds, rather than a remand to a Young Offenders Institution. If this position was taken, costs could be magnified given there are currently 60 16/17 year olds in Polmont Young Offenders Institution on remand or sentenced.”93

116. Dundee City Council estimated its potential increase in expenditure relating to young people in secure care on remand to be around £45,000. It further pointed out that it would also incur additional costs relating to secure transport costs to courts, children’s hearings or medical appointments at an average cost of £610 per journey.

117. In its letter of 3 December, the Bill Team acknowledged that “the section covering this in the FM does not go into detail on the process of obtaining estimates”94 before setting out further details on its modelling exercise which were intended to address the issues raised by local authorities. On the basis of the predicted “very small impact in financial terms” and in the context of a “substantial reduction” in the use of secure remand places, it concluded “that the small

90 Criminal Justice (Scotland) Bill. Financial Memorandum, paragraph 268
91 Renfrewshire Council. Written submission, paragraph 4
92 West Dunbartonshire Council. Written submission, paragraph 5
93 Falkirk Council. Written submission, paragraph 14
94 Scottish Government Bill team letter
percentage increase estimated for in the Bill would be manageable within existing resources.”

118. The Committee notes that this more detailed explanation was provided in response to points made in written evidence. However, it asks why this was not originally included in the FM in order to facilitate proper scrutiny of the estimates it contained.

CONCLUSION

119. The lead committee is invited to consider this report as part of its scrutiny of the Criminal Justice (Scotland) Bill’s FM.
ANNEXE A: INDEX OF ORAL EVIDENCE SESSIONS
29th Meeting, 2013 (Session 4) Wednesday 20 November 2013
Elspeth MacDonald, Deputy Director, Criminal Justice Division, Peter Hope-Jones, Policy Officer, Criminal Justice Bill Team, and Kerry Twyman, Finance Business Partner, Justice, Scottish Government.

ANNEXE B: INDEX OF WRITTEN EVIDENCE
Written submissions—

- Aberdeenshire Council (60KB pdf)
- Association of Scottish Police Superintendents (172KB pdf)
- Crown Office and Procurator Fiscal Service (165KB pdf)
- Dundee City Council (147KB pdf)
- Faculty of Advocates (539KB pdf)
- Falkirk Council (173KB pdf)
- Fife Council (147KB pdf)
- Joint Submission from Scottish Police Authority and Police Scotland (112KB pdf)
- Renfrewshire Council (168KB pdf)
- Scottish Court Service (142KB pdf)
- Scottish Legal Aid Board (205KB pdf)
- Scottish Prison Service (87KB pdf)
- South Lanarkshire Council (143KB pdf)
- The Law Society of Scotland (309KB pdf)
- West Dunbartonshire Council (154KB pdf)
- West Lothian Council (87KB pdf)

Supplementary evidence:
- Crown Office and Procurator Fiscal Service (123KB pdf)
- The Law Society of Scotland (200KB pdf)

Correspondence
- Letter from the Scottish Government Bill team to Convener, dated 3 December 2013 (349KB pdf)
- Letter from Kenny MacAskill, Cabinet Secretary for Justice, to Convener (530KB pdf)