

# **BAIL AND RELEASE FROM CUSTODY (SCOTLAND) BILL [AS AMENDED AT STAGE 2]**

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## **SUPPLEMENTARY FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this Supplementary Financial Memorandum is published to accompany the Bail and Release from Custody (Scotland) Bill (introduced in the Scottish Parliament on 8 June 2022) as amended at Stage 2.
2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.
3. The purpose of this Supplementary Financial Memorandum is to set out the expected costs associated with the new and amended provisions included in the Bill following the amendments made at Stage 2. This document addresses those amendments with anticipated or potential cost implications. Amendments agreed at Stage 2 which are not covered in this Supplementary Financial Memorandum are considered not to significantly or materially affect the assumptions in the original Financial Memorandum.

### **Part 1 of the Bill - Bail**

4. Provisions adjusted in Part 1 of the Bill and new provisions added to Part 1 of the Bill at Stage 2 have been identified as being likely to give rise to more than marginal costs/savings and are described below.

#### *Section 4 – Refusal of bail: duty to state and record reasons*

#### *Reducing requirements on the court to record reasons*

5. Amendments were agreed which reduced the requirements falling on the court to record reasons of certain matters associated with bail decisions.
6. In the Bill as introduced, section 4 would have required the court to do as follows.

7. Section 4 of the Bill amends section 24 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) to provide that where the court refuses bail in any proceedings in which a person is accused of an offence, the court must firstly state the grounds on which it determines (in accordance with new section 23B(1A) of the 1995 Act) that there is good reason for refusing bail. Secondly, when refusing bail solely on the ground specified in section 23C(1)(a) of the 1995 Act (that is, substantial risk of absconding or failing to appear), the court must state why it considers that the necessity test in new section 23B(1A)(b) is met. And, thirdly, the court must state its reasons for refusing to grant bail subject to an electronic monitoring requirement under Part 1 of the Management of Offenders (Scotland) Act 2019 – more specifically, its reasons for considering either that imposing bail conditions subject to such a requirement would not be appropriate, given the accused’s circumstances, or that doing so would not be enough to properly safeguard the interests of public safety or justice as mentioned in new section 23B(1A)(b)(i) or (ii).

8. The court must also ensure that the specific grounds and reasons noted above are added to the record of the proceedings. It is this set of requirements that were adjusted at Stage 2.

9. Changes agreed at Stage 2 mean that the court is now only required to record the grounds upon which it determines there is good reason for refusing bail. As a result of these amendments, the changes to the financial cost estimates relate to the Scottish Administration.

## **COSTS ON THE SCOTTISH ADMINISTRATION**

10. In the Financial Memorandum provided for the Bill on introduction, it was estimated that the costs would amount to £41,405 per annum<sup>1</sup>. This reflected the time that would be added to the work of court staff to record reasons. Although changes at Stage 2 reduced the requirements, the main requirement to record reasoning in all cases where remand is used remains. The other reasons no longer needing to be recorded will reduce the cost estimate, but not in a manner which it can be reduced by two-thirds. This is because the number of times reasons would have needed recorded under the other requirements was likely to arise in a smaller number of cases e.g. where a failure to appear ground was relevant which will not be all remand cases.

11. For the purposes of this supplementary Financial Memorandum, it is estimated the original cost estimate of £41,405 should be adjusted down by one-third to £27,603. This is based on a simple estimate that two-thirds of the impact of the original cost estimate related to the recording of reasons for remand. There is a degree of uncertainty within this estimate given it cannot accurately be predicted exactly how many relevant cases will arise where recording is needed.

### *Reasons to be given in court when further conditions of bail are not used in certain cases*

12. An amendment was agreed to add further types of offences to section 24(2B) of the 1995 Act which provides that when the court, in summary or solemn proceedings, grants bail on standard conditions to a person accused of a sexual offence without imposing further conditions of bail, it must explain why it considers in the circumstances of the case that no such conditions are necessary. The types of offences where this requirement is added are domestic abuse related offences and the stalking offence.

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<sup>1</sup> Paragraph 58 [Financial Memorandum \(parliament.scot\)](#)

## **COSTS ON THE SCOTTISH ADMINISTRATION**

13. Using data contained in the Financial Memorandum provided for the introduction of the Bill, an average of around 77,000 initial bail decisions were considered each year in the period 2016/17 to 2019/20<sup>2</sup>. Around 67,900 such decisions resulted in bail being granted.

14. In 2019/20, 246 people were convicted<sup>3</sup> of a domestic abuse offence<sup>4</sup> and 9,355 people were convicted of an offence associated with domestic abuse<sup>5</sup>. Assuming the proportion of those convicted of domestic abuse related offences who are remanded during the process of their case is broadly similar to the overall proportion of accused people remanded, this equates to approximately 11% of the 9,601 people (1,056) convicted of domestic abuse related offences being remanded during the process of their case<sup>6</sup> and approximately 89% (8,545 people) convicted of domestic abuse offences receiving bail during the process of their case.

15. In 2019/20, 496 people were convicted of the stalking offence. As with domestic abuse related offences, assuming the proportion of those convicted of the stalking offence who are remanded during the process of their case is broadly similar to the overall proportion of accused people remanded, this equates to approximately 11% of the 496 (45) convicted of stalking offences being remanded during the process of their case and approximately 89% (441) people convicted of stalking offences receiving bail during the process of their case.

16. For domestic abuse related offences and the stalking offence combined, this equates to approximately 13.2% of decisions to grant bail made (8,986 as a % of 67,900). Data is not available to assess in what proportion of these cases further conditions of bail were utilised. This is relevant as the requirements falling on the court relate to cases where further conditions are not imposed.

17. For the purposes of providing an estimate, it is considered reasonable to suggest two-thirds of these cases (where bail is granted) further conditions are not imposed. This would trigger the requirement on the court to explain their reasoning not to impose further conditions.

18. Two-thirds of 8,986 cases is 5,991 cases. The Financial Memorandum for the Bill as introduced provided an estimate of the hourly cost of Scottish Courts and Tribunals Service staff time and judicial staff time as being £273 an hour<sup>7</sup>. This excludes building costs.

19. The requirement to explain reasoning as to why no further conditions imposed in this category of cases added at Stage 2 may take approximately one minute of court time. 5,991 cases requiring an extra minute of court time would amount to approximately 100 hours of additional court time a year, which equates to £27,300. There is a considerable degree of uncertainty with these estimates.

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<sup>2</sup> Paragraph 51 [Financial Memorandum \(parliament.scot\)](#)

<sup>3</sup> Conviction data is being used rather than charge level data. This means some cases (where a person is charged but not convicted) will not be reflected in the data. It is considered the overall effect of using convictions data should still provide a broadly accurate estimate.

<sup>4</sup> Table 2A [Criminal Proceedings in Scotland, 2019/20](#)

<sup>5</sup> Table 12 [Criminal Proceedings in Scotland, 2019-20 - gov.scot \(www.gov.scot\)](#)

<sup>6</sup> Paragraph 51 [Financial Memorandum \(parliament.scot\)](#)

<sup>7</sup> Paragraph 54 [Financial Memorandum \(parliament.scot\)](#)

Section 5A – Report on bail and remand

20. Section 5A requires the Scottish Ministers to prepare and publish a one-off report on bail and remand. The requirement requires a report covering certain matters to be published as soon as reasonably practicable after the end of the reporting period. The reporting period is a period of 3 years starting the day section 2 of the Bill comes into force.

**COSTS ON THE SCOTTISH ADMINISTRATION**

21. The specific elements that must be included in the report are elements where data is already collected by the Scottish Government. It is not therefore expected there will be significant costs associated with developing routes to collect data to be contained in the report.

22. There will be costs associated with the staff time required to prepare the report. Estimating the amount of staff time carries with it a degree of uncertainty. For the purposes of this supplementary Financial Memorandum, it is estimated in the year preceding publication and the year of publication, staff time equivalent to 0.15 Full Time Equivalent (FTE) for three members of Scottish Government staff will be required to prepare the report.

23. It is estimated two C1 members of staff and one B3 member of staff would spend this time on preparing the report.

24. The estimated average costs of a C1 member of staff, including payroll costs, is £77,733<sup>8</sup> and two 0.15 FTE costs would amount to £23,320 a year (£11,660 per person) for the two years in question. This totals to £46,640 over two years.

25. For a B3, the average cost of a B3 member of staff is £60,933<sup>9</sup> and 0.15 FTE costs would amount to £9,140 a year for the two years. This totals £18,280 over two years.

26. The cost arising each year for two consecutive years (the year leading up to the report being published and the year the report is published) is £32,460.

**Part 2 of the Bill - Release**

Section 7A Review of recommendations and directions by the Parole Board

27. Section 7A provides the Parole Board for Scotland with the power to review their decision to recommend release on parole in certain circumstances. Review is available where a long-term prisoner has been released on the new temporary release licence (as provided by section 7 of this Bill) and that licence has been revoked. The Board can also review their decision in the event of new information becoming available to it between the decision to release on licence and the point of release if that information, in the Board's view, has a significant bearing on the individual's suitability for release.

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<sup>8</sup> Based on approximate mid-range C1 salary point of £58,300 (2022-23) plus an additional one-third non-payroll costs such as employer pension contributions

<sup>9</sup> Based on approximate mid-range B3 salary point of £45,700 (2022-23) plus an additional one-third non-payroll costs such as employer pension contributions

## **COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

28. The underpinning procedure for this new process will be determined via the Parole Board (Scotland) Rules. However, there are likely to be additional costs for the Parole Board for Scotland. Specifically, the Board will be required to hold additional hearings to consider this information/review their decision. The cost of a full (three member) panel is around £1000. It is very difficult to estimate the exact number of these reviews which may be required, however the Parole Board for Scotland estimate that this could be around 5-10 a year. That would give an additional annual cost of between £5,000-£10,000. The Scottish Government will work closely with Parole Board Scotland to consider these costs in more detail during implementation.

29. In addition to the additional costs of these review hearings, there will be a training requirement for Parole Board members in this new process. These one-off costs will fall in the year preceding implementation (2023/24) and are likely to total an estimated £24,000 (based on the average daily Board member rate of £300, current board member numbers (40) and a two day training requirement). Thereafter, training this process will form part of the standard training provided to Parole Board members.

*This document relates to the Bail and Release from Custody (Scotland) Bill (SP Bill 16A) as amended at stage 2*

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