INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament’s Standing Orders, this Supplementary Financial Memorandum is published to accompany the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill (introduced into the Scottish Parliament on 19 March 2015) 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. This Supplementary Financial Memorandum addresses the financial impact of Stage 2 amendments on the Bill where they would substantially alter any of the costs.

SECTION 2 – MANDATORY INQUIRIES

4. Section 2(3A) of the Bill was added at Stage 2 by amendment and provides for mandatory fatal accident inquiries (FAIs) for compulsorily detained mental health patients. Section 3(2)(f) and (g) provides for an investigation or inquiry by the Mental Welfare Commission for Scotland (MWCS) to be an exception under which the Lord Advocate can decide not to hold a mandatory FAI. Such investigations are not, however, carried out in relation to natural cause or expected deaths where there has been no apparent ill-treatment, neglect or deficiency in care.

5. The new requirement for mandatory FAIs would affect every natural cause and expected mental health death (including those which are completely unrelated to the patient’s mental condition) and any other death in which the MWCS did not carry out an investigation. In 2012-13, the MWCS reported on 78 deaths of patients subject to compulsion, 58 of which were natural cause deaths. Assuming that only those natural cause deaths were not subject to a MWCS investigation, this would mean that there would be up to 58 additional FAIs per annum, in a typical year, which would potentially double the present number of FAIs (currently 50-60 per annum). The potential costs of such additional FAIs are estimated below by reference to the cost impact on the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Courts and Tribunals Service (SCTS) and the Scottish Legal Aid Fund.
Estimated cost to COPFS and SCTS of preparing and conducting an FAI

<table>
<thead>
<tr>
<th></th>
<th>1 day FAI</th>
<th>1 week FAI</th>
<th>Lengthy FAI</th>
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<tbody>
<tr>
<td>COPFS</td>
<td>£9,494</td>
<td>£13,122</td>
<td>£94,701</td>
</tr>
<tr>
<td>SCTS</td>
<td>£2,000</td>
<td>£10,000</td>
<td>£90,000</td>
</tr>
<tr>
<td>Total</td>
<td>£11,494</td>
<td>£23,122</td>
<td>£184,701</td>
</tr>
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</table>

6. The one-day FAI is based on a straightforward mandatory FAI heard over one day or less. The one week FAI is based on a week-long mandatory FAI. The lengthy FAI is based on an FAI involving complex medical evidence (the length of 45 days has been used for the SCTS cost as an example). The impact on SCTS relates to the accommodation, services, staff and judiciary it provides for the purposes of FAIs.

7. The following assumptions were made in estimating the existing costs in the above table. The costs for SCTS are based on the actual court sitting days for the hearing and, as such, do not include preparation work, including preliminary hearings. They also exclude any additional costs if the FAI is held outwith a sheriff court room. The estimates for COPFS for the one-day FAI and the one-week FAI assume that administrative and legal staff costs were mid-range; the legal costs for COPFS for the lengthy FAI were, however, calculated at the equivalent of the Civil Service Grade 6 level (£53,060 - £64,733).

8. These figures suggest that, potentially, an extra 58 FAIs per annum could cost in the region of £0.66 million per annum even if they were all one day hearings, which is unlikely. The overall costs to COPFS and SCTS are likely to be much higher. An upper range of £1.34 million may be experienced in the event that a fatality resulted in each of the 58 cases having a week long inquiry.

9. This would also have an implication for the legal aid budget, particularly if the changes proposed by section 10A of the Bill are taken forward. If the number of FAIs were to double, the Scottish Legal Aid Board estimates it might be expected that the legal aid bill for those inquiries to increase expenditure from the Legal Aid Fund by around £0.5m to £1m. The combined effect of this section and section 10A is detailed at paragraph 39.

10. There will, in addition, be unquantifiable costs associated with the attendance of doctors, nurses and other medical staff at FAIs in terms of backfilling when they are attending the inquiry, possibly for several days.

**SECTION 7A – FAMILY LIAISON CHARTER**

11. The Solicitor General gave a commitment during Stage 1 evidence on the Bill to consult on, and produce, a charter of investigation milestones, which will address concerns over keeping bereaved families informed about death investigations and will complement the provisions in the Bill to make the FAI system more efficient.

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1 Includes administrative, precognition, Victim Information & Advice (VIA), legal, pathology and witness costs.
2 Based on the basic approximate cost of an FAI sitting in a sheriff court, which includes judicial and staff costs as well as running costs.
12. Although COPFS does currently conduct face to face meetings with many families and provide them with regular updates, the charter will introduce a standardised approach to communication with all bereaved families, whilst allowing some flexibility to tailor communication according to the wishes of the family involved. It is likely therefore that there will be a significant increase in face to face meetings with families and more contact either by phone or letter depending on the preference of the family involved. This amounts to a significant commitment to the frequency/regularity of contact made with all families which will have a corresponding financial impact on COPFS.

13. It is proposed that, in cases requiring further investigation with a view to deciding whether criminal proceedings should be instigated and/or whether an FAI should be held, the Crown Office will make contact with bereaved families by twelve weeks after the date that the death has been reported to COPFS. They will offer the family a personal meeting within 14 days to give them an update on the progress of the death investigation. They will also give them an idea of the likelihood of criminal proceedings and the possibility of an FAI.

14. It is also proposed that the charter will explain the different stages of a death investigation and set out the commitments of the Crown Office in terms of keeping in touch with relatives. It is proposed that they will contact the families every six weeks after the initial contact. The charter will also include a Frequently Asked Questions section and links to further information.

15. COPFS will be working towards implementation of the commitments to coincide with the passing of the Bill but, recognising how important these commitments are, will be endeavouring where possible to meet those commitments in the interim.

16. There are currently around 11,500 deaths reported to the Scottish Fatalities and Investigation Unit (SFIU) of COPFS per year. 93% of cases were closed within 12 weeks which means that the remaining 7% (805) are being further investigated beyond the 12 week period. There are 50 Health and Safety Division (HSD) of COPFS workplace cases over and above this figure. Therefore, there are roughly 855 (805+50) deaths per year which require further investigation.

17. HSD advise that in all 50 cases they would have a minimum of two meetings per case. So there is an assumption that in all HSD cases a 12 week meeting will take place. SFIU advise that, in approximately one third of cases being further investigated, they currently have face to face meetings. It is estimated that the commitment in the charter will therefore result in 537 additional 12 week meetings. COPFS advise that each will require one day of the time of a senior procurator fiscal depute and three hours of the time of a Victim Information and Advice (VIA) officer.

18. Thereafter it is expected that six week meetings will take place in around half of cases (428) and that there will be around four extra meetings per case per annum. This will equate to around 1710 extra meetings per annum. COPFS again advise that each will require one day of the time of a senior procurator fiscal depute and three hours of the time of a VIA officer. In the other cases contact with the family is expected to be by letter and this will again amount to around 1710 additional contacts per annum. COPFS advise that each will in such cases take one hour of the time of a senior procurator fiscal depute.
19. COPFS estimate that the resource implications of implementing the charter for liaison with bereaved families will amount to around £1 million. This is arrived at by the calculation of the time commitment of COPFS staff explained in paragraphs 17 and 18. COPFS are considering the efficiency savings that can be made in other areas of the business to meet some of the costs as part of their business and budget planning.

SECTION 8 – REASONS FOR NOT HOLDING AN INQUIRY

20. Section 8 of the Bill was amended at Stage 2 to require the Lord Advocate to give reasons in writing to persons specified in subsection (2) where it is decided that an inquiry is not to be held into the death of a detained mental health patient under section 2(3A) if the Mental Welfare Commission for Scotland has carried out an investigation or an inquiry under section 3(2)(f) or (g).

21. It is thought that it is likely that the discretion would be exercised in no more than 20 cases per annum. Such letters are likely to take an hour to draft and the hourly cost of the staff who would undertake this task is £45 so the total cost is likely to be up to £900.

SECTION 10A – AVAILABILITY OF CIVIL LEGAL AID

22. Section 10A of the Bill was amended at Stage 2 by amendment and will make civil legal aid available under the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) at an FAI to relatives of a person in relation to whose death the inquiry is taking place, by removing the need to satisfy the statutory merits tests (thus treating them as automatically satisfied) and subject to a different financial eligibility test.

23. It does so by:

- specifying that the Scottish Legal Aid Board is required to consider any such relative as having satisfied the statutory tests at section 14 of the 1986 Act of having probable cause and it being reasonable in the particular circumstances of the case to grant legal aid; and
- disapplying the financial eligibility test set out at section 15 of the 1986 Act and requiring Ministers to make provision for alternative (and presumably more generous) financial eligibility conditions by way of regulations, which will allow relatives to participate at all FAI proceedings.

24. For the purposes of being eligible for legal aid in this way, a relative is:

- The person’s spouse or civil partner at the time of the person’s death;
- Someone living with the person as if married at the time of their death;
- Where there is no spouse, civil partner or someone living with the person as if married at the time of their death, the person’s nearest known relative.

25. The following table shows the number of grants of legal aid in FAIs over the past five years. The costs have been constructed to show lifetime costs of cases summed back on to the
year the FAI case started, to demonstrate what the potential impact could be of a small increase in case numbers:

<table>
<thead>
<tr>
<th></th>
<th>2009/10</th>
<th>2010/11</th>
<th>2011/12</th>
<th>2012/13</th>
<th>2013/14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of legal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>assistance applications for FAIs</td>
<td>33</td>
<td>38</td>
<td>16</td>
<td>10</td>
<td>18</td>
</tr>
<tr>
<td>Number of legal aid certificates paid for FAIs</td>
<td>27</td>
<td>25</td>
<td>10</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Average payment per certificate</td>
<td>£88,950</td>
<td>£36,970</td>
<td>£18,124</td>
<td>£4,405</td>
<td>£16,966</td>
</tr>
<tr>
<td>Range of certificate payments</td>
<td>£1,470 to £389,591</td>
<td>£197 to £166,103</td>
<td>£161 to £110,891</td>
<td>£823 to £9,411</td>
<td>£1,764 to £82,894</td>
</tr>
<tr>
<td>Total paid from the Legal Aid Fund for FAIs</td>
<td>£2,401,661</td>
<td>£924,261</td>
<td>£181,236</td>
<td>£35,239</td>
<td>£135,727</td>
</tr>
</tbody>
</table>

26. In terms of actual expenditure per year, the cost to the Legal Aid Fund was £1,799,800 in 2011-12, £534,900 in 2012-13, and £137,900 in 2013-14. SLAB estimates expenditure in 2014-15 to be around £259,000 net.

27. Making the changes to eligibility in section 10A would increase the number of relatives receiving legal aid for FAI proceedings, but it is difficult to predict the increased cost. It might be reasonable to expect that there would be at least one grant of legal aid in most proceedings.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Total number of FAIs commenced</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011/12</td>
<td>63</td>
</tr>
<tr>
<td>2012/13</td>
<td>46</td>
</tr>
<tr>
<td>2013/14</td>
<td>33</td>
</tr>
<tr>
<td>2014/15</td>
<td>59</td>
</tr>
</tbody>
</table>

28. Based on these figures, removing the reasonableness test for relatives seeking legal aid in FAI cases could see the number of grants multiply four or five times if it meant that relatives would receive legal aid in every case. As can be seen, legal aid expenditure on these cases varies widely from year to year, but an additional base cost of at least £0.5 million per year might be expected. Where multiple grants of legal aid are made to families involved in an FAI, this could increase substantially. On the basis of an average of three grants per FAI £3.5 million additional expenditure might be expected per annum. This is very likely to be variable from year to year and expenditure could swing considerably from year to year.

29. Total spend from the Legal Aid Fund in 2013/14 was £150.5 million.

SECTION 27A – REPORTS

30. Section 27A was added to the Bill at Stage 2 and requires the Scottish Ministers to prepare a report at the end of the financial year setting out:
This document relates to the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill as amended at Stage 2 (SP Bill 63A)

- The number of fatal accident inquiries that ended during the financial year;
- The number in which sheriffs made recommendations which require a response under section 27(1)(a) of the Bill;
- The total number of such recommendations made;
- The number of such recommendations in relation to which a response was received by the Scottish Courts and Tribunals Service (SCTS) under section 27(1)(a); and
- The number of recommendations in relation to which a notice was published under section 27(7) indicating that no response was received by SCTS.

31. All of this information will be published by SCTS under sections 26(1) and 27(5A) of the Bill. It is expected that this will be published on the SCTS website. It is, therefore, anticipated that it will be relatively easy for Scottish Government officials to access the required information for the production of the report. There is, for example, no intention that there will be analysis of recommendations or responses. It is, therefore, expected that the cost of the duty to prepare a report (which would only repeat the figures on the SCTS website), to lay a copy of the report before the Scottish Parliament and to publish the report would not be significant.

SECTION 30 – INITIATING FURTHER PROCEEDINGS

32. Section 30 of the Bill has been amended to provide for the sheriff holding a hearing to give participants and the procurator fiscal the opportunity to make representations about whether further proceedings which are to be held under section 28 of the Bill (due to new evidence coming to light which would have materially affected a finding or recommendation in the sheriff’s determination at the original inquiry) should be a re-opened and continued inquiry or a completely fresh inquiry.

33. It is not expected that the power to initiate further inquiry proceedings will be used very often. It will only be invoked in the public interest, with a high test in section 28(2) and (3) for the definition of new evidence, and it is therefore expected to be used rarely. The costs of additional proceedings, including the hearing to permit the sheriff to hear the views of the procurator fiscal and the participants as to the form of the new proceedings, will be managed as part of the flux of FAIs. Those affected by this provision are likely to be those involved in the original inquiry.

SUMMARY OF ADDITIONAL COSTS

Costs on the Scottish Administration

34. The parts of the Scottish Administration affected by the proposals will mainly be COPFS and SCTS. The impact on each body is set out above under the impact of the provision which implies additional cost.

35. The additional cost of FAIs into deaths of detained mental health patients to COPFS and SCTS is £0.66 million but this could rise to £1.34 million.
36. The additional cost of implementing the commitments in the family liaison charter by COPFS is estimated to be £1 million and COPFS will be seeking efficiency savings in other areas of the business to meet some of the costs. It is also expected that some of the cost will be managed as part of the flux and unpredictability of numbers of deaths requiring investigation and inquiry by COPFS.

Costs on local authorities

37. The Scottish Government does not anticipate any additional costs on local authorities.

Costs on other bodies, individuals and businesses

38. The Scottish Government does not anticipate any additional costs on other bodies, individuals and businesses other than those specified above, specifically SLAB. As noted in paragraph 10, there will be unquantifiable costs on the NHS as a result of the amendment extending mandatory inquiries to deaths of compulsorily detained mental health patients.

39. The additional cost of FAIs to SLAB as a result of the changes in the rules on eligibility for legal aid may be expected to be at least £0.5 million but this may rise significantly if multiple families are involved in any particular case such as the Glasgow bin lorry tragedy. On the basis of an average of three grants per FAI £3.5 million additional expenditure might be expected per annum. This is very likely to be variable from year to year and expenditure could swing considerably from year to year. The £3.5 million does not include the costs of the amendment extending mandatory inquiries to deaths of compulsorily detained mental health patients. As set out in paragraph 9, additional costs for the mental health change could equate to around £500,000 to £1 million. Total additional costs could therefore equate to £4.5 million per annum.
INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

SUPPLEMENTARY FINANCIAL MEMORANDUM