

VICTIMS AND WITNESSES (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Victims and Witnesses (Scotland) Bill introduced in the Scottish Parliament on 6 February 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 23–PM.

EXPLANATORY NOTES

INTRODUCTION

2. 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.

3. 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

4. There are two main policy areas in the Bill: reforms to the justice system relating to victims and witnesses, and the establishment of a National Confidential Forum (NCF) for adults placed in institutional forms of care as children.

5. The proposed reforms relating to victims and witnesses will improve the support available for such individuals. Key proposals include:

- giving victims and witnesses a right to certain information about their case;
- creating a duty on organisations within the justice system to set clear standards of service for victims and witnesses;
- creating a presumption that certain categories of victim are vulnerable, and giving such victims the right to utilise certain special measures when giving evidence;
- requiring the court to consider compensation to victims in relevant cases;
- introducing a victim surcharge so that offenders contribute to the cost of supporting victims; and
- introducing restitution orders, allowing the court to require that offenders who assault police officers pay to support the specialist non-NHS services which assist in the recovery of such individuals.

6. The establishment of the NCF will provide an opportunity for adults who were placed in institutional care as children to recount their experiences of being in care in a confidential, non-judgemental and supportive setting.

7. The key proposals in the Bill which relate to the NCF are as follows:

- The functions of the NCF are set out in a clear and distinct way, the main function being to offer adults placed in institutional care the opportunity of acknowledgement of their experiences, in particular those of abuse;
- The scope of the NCF is defined to enable all adults placed in institutional care as children the opportunity to participate in hearings;

- The testimony of persons who participate in the NCF is protected from disclosure and those persons will be protected from the threat of defamation as a result of testimony they give. Members of the NCF who will conduct hearings, receive testimony and offer acknowledgement, and its staff, will also be protected from the threat of action for defamation where they have acted in good faith in discharging the functions of the Forum;
- The arrangements by which the NCF is to be hosted by an existing public body, specifically the Mental Welfare Commission, are set out, including the mechanisms to safeguard the respective operational autonomy of the Forum and Commission.

COMMENTARY ON SECTIONS

General principles

Section 1 - General principles

8. Section 1 provides that certain identified persons must take account of four general principles whilst carrying out any statutory functions they have in relation to victims and witnesses. The persons so identified in subsection (2) are the Lord Advocate, the Scottish Ministers, the chief constable of the Police Service of Scotland, the Scottish Court Service (SCS), and the Parole Board for Scotland (PBS).

9. In relation to the Scottish Ministers, the duty to have regard to the principles will primarily fall on the Scottish Prison Service (SPS), which routinely deals with victims and witnesses. SPS is not named specifically in subsection (2) and, as a result of its legal status as an Executive Agency, the duty has to be placed on the Scottish Ministers generally.

10. The principles listed set out that victims and witnesses should be able to obtain information about what is happening in their cases; should have their safety ensured; should be able to access appropriate support; and should be able to participate effectively where that is appropriate.

11. Subsection (4) enables the Scottish Ministers to modify by order the list of persons to whom the duty applies.

Standards of service

Section 2 - Standards of Service

12. Section 2 provides that certain persons must set and publish standards in relation to the services which those bodies provide to victims and witnesses, and set out their complaints procedure. The persons are the Lord Advocate, the Scottish Ministers, the chief constable of the Police Service of Scotland, SCS, and PBS.

13. Subsection (2)(a) and (3)(a) provide that the duty on the Lord Advocate only applies in relation to functions relating to the investigation and prosecution of crime. Subsection (2)(b) and (3)(b) provide that the duty on the Scottish Ministers only applies in relation to functions relating to prisons and young offenders institutions and the persons detained in them. The purpose of

these restrictions is to identify COPFS and SPS as the particular bodies to which this duty is intended to apply. As described in relation to section 1, the duty cannot be placed specifically on SPS, and the same is true of COPFS, which is a Ministerial Department. Both COPFS and SPS will be expected to set out distinct standards of service.

14. This section also enables the Scottish Ministers to modify, under subsection (4), the list of persons to whom the obligation applies. Subsection (5) provides that the term “victim” includes a prescribed relative of a victim, and subsection (6) enables the Scottish Ministers to prescribe by order those to be regarded as such a relative.

Disclosure of information

Section 3 – Disclosure of information about criminal proceedings

15. Section 3 requires the chief constable of the Police Service of Scotland, SCS, and any prosecutor to disclose certain information to victims and witnesses of criminal offences (or alleged criminal offences) on request. The persons who can seek information are those who appear to be a victim of the offence or alleged offence; those who are to give, or are likely to give, evidence in criminal proceedings in relation to the offence or alleged offence; and those who have given a statement to a police officer or prosecutor in relation to the offence or alleged offence. The information to be disclosed is set out in subsection (6).

16. The exception to this obligation to provide information to those detailed in subsection (2), is set out in subsection (4).

17. Subsection (4) provides that information need not be disclosed in so far as the person on whom the obligation falls (the qualifying person) considers that disclosure would be inappropriate.

18. Subsection (5) provides that the information which can be requested (referred to as “qualifying information”) must fall within the types of information set out in subsection (6); relate to the offence or alleged offence; and be specified in a request under subsection (1).

19. The Scottish Ministers may, under subsection (7), modify the list of information which must be provided and the list of persons who must provide such information detailed in subsection (5).

Interviews

Section 4 - Interviews with children: guidance

20. This section provides that police officers and social workers must have regard to guidance issued by the Scottish Ministers when carrying out joint investigative interviews with a child witness under the age of 18 in relation to criminal proceedings or a matter which may lead to criminal proceedings. Subsection (4) allows the Scottish Ministers to modify by order the list of persons to whom the obligation applies. Defining “child” as anyone under 18 is in line with the EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU) (which defines “child witness” for the purposes of criminal

proceedings as any person below 18 years of age) and various other Directives (e.g. on trafficking of human beings and child sexual exploitation). Lord Carloway's Report into criminal law and practice also recommends that "for the purposes of arrest, detention and questioning, a child should be defined as anyone under the age of 18 years."

Section 5 – Certain sexual offences: victim's right to specify gender of interviewer

21. This section allows victims or alleged victims of certain types of offence to specify the gender of the investigating officer who is to carry out the interview. The types of offences are sexual offences; human trafficking; domestic abuse and stalking.

22. Subsection (4) provides that the investigating officer need not comply with a request for a specified gender of interviewer if doing so would be likely to prejudice the criminal investigation (for example, if the investigation is time critical and no officers of the specified gender are currently available), or if doing so would not be reasonably practicable. Subsection (6) provides that any failure to comply has no effect on any relevant criminal proceedings.

23. The section also allows the Scottish Ministers to modify by order the list of types of offences to which this section applies and the persons carrying out the interview.

Vulnerable witnesses

Section 6 – Vulnerable witnesses: main definitions

24. This section, along with sections 7-9 and 11-17, amends the Criminal Procedure (Scotland) Act 1995 (the 1995 Act). These sections redefine vulnerable witness, including child witness, to improve the identification and the support available to enable them to give their best evidence and sets out the special measures available to these witnesses along with the procedure to be followed in criminal proceedings to enable such special measures to be used.

25. Section 6(a) replaces section 271(1) of the 1995 Act, and provides that the following categories of person are to be regarded as vulnerable witnesses:

- children (i.e. those under age 18 at the date of the commencement of the proceedings in which the hearing is being or to be held);
- adult witnesses whose quality of evidence (as defined in section 271(4) of the 1995 Act) is at significant risk of being diminished either as a result of a mental disorder (as defined by section 328 of the Mental Health (Care and treatment) (Scotland) Act 2003), or due to fear or distress in connection to giving evidence;
- victims of alleged sexual offences, human trafficking, domestic abuse or stalking who are giving evidence in proceedings which relate to that particular offence;
- witnesses who are considered by the court to be at significant risk of harm by reason of them giving evidence.

26. Section 6(b) inserts subsection (1AA) which gives the Scottish Ministers an order-making power to modify the categories of witness to be presumed vulnerable (in addition to victims of

sexual offences (paragraph (c)(i)), human trafficking (paragraphs (c)(ii) and (c)(iii)), domestic abuse (paragraph (c)(iv)), and stalking (paragraph (c)(v))).

27. Section 6(c) removes subsection (1A), which currently provides that those under the age of 18 are to be considered child witnesses for the purposes of human trafficking cases. Given that section 6(a) provides that all those under 18 are to be considered child witnesses, this is no longer necessary.

28. Section (6)(e) inserts subsection (4A) which requires the court to consider the best interests and views of the witness in deciding whether they are vulnerable either because the quality of their evidence is likely to be diminished (subsection (1)(b)) or they are likely to be at significant risk from harm in giving their evidence (subsection (1)(d)).

Section 7 – Child and deemed vulnerable witnesses

29. This section inserts the definitions of “child witness” (a witness under the age of 18) and “deemed vulnerable witness” (a witness who is considered vulnerable as a result of being an alleged victim of a sexual offence, human trafficking, domestic abuse or stalking) into section 271(5) of the 1995 Act. It makes various changes to section 271A (which currently details how child witnesses are to be treated in relation to special measures) and other parts of the 1995 Act which currently relate only to child witnesses to ensure that deemed vulnerable witnesses are subject to the same provisions as child witnesses are at present.

30. In particular, deemed vulnerable witnesses will be automatically entitled to the use of certain special measures known as standard special measures (as only child witnesses are currently). These standard special measures are the use of a television link, a screen (to avoid the witness seeing the accused), and a supporter. In addition, the procedures for child witnesses are expanded to encompass deemed vulnerable witnesses.

Section 8 – Child and deemed vulnerable witnesses: standard special measures

31. This section amends section 271A of the 1995 Act to remove the current restriction that a live television link has to be in another room within the court and a supporter has to be used in conjunction with either a live television link or a screen when being used as standard special measures (under section 271A(14) of the 1995 Act). It also gives the Scottish Ministers an order making power so that they can add new standard special measures, amend or delete existing standard special measures and also modify sections 271A – 271M. Sections 271A - 271G set out the process to be followed in applying for special measures, and some related matters, while 271H - 271M specify what the special measures are and how they are to be used (e.g. 271K specifies that if a screen is to be used so that a vulnerable witness cannot see the accused, the accused should still be able to see and hear the vulnerable witness).

Section 9 – Objections to special measures; child and deemed vulnerable witnesses

32. This section amends the 1995 Act to allow any party to criminal proceedings to object to a notice requesting special measures for a child witness or deemed vulnerable witness. Such an “objection notice” must be lodged within seven days (or later with the permission of the court) of a vulnerable witness notice being lodged, and must detail the special measures that the party considers inappropriate, along with the reason for their objection.

33. If a notice under this section is lodged, the court must make an order that the notice must be considered at the appropriate diet (depending on the level of the court). Subsections (b) and (c) make the necessary consequential changes to section 271A(5) of the 1995 Act so that the time limit for the court's consideration of a vulnerable witness application is extended to take account of the possibility of an objection notice being lodged and to section 271A(13) of the 1995 Act to include intimation by the party lodging the objection notice to special measures to other parties to the proceedings as they do at present in relation to an application for special measures.

Section 10 – Child witnesses

34. This section amends the current procedures about children giving evidence in the court, set out in section 271B of the 1995 Act, to place greater emphasis on the wishes of the child. Where a child wishes to be present in the court to give evidence, the court must make an order requiring the child to be present, unless the court considers that would not be appropriate. Where a child does *not* express a wish to give evidence in the court, or expresses a wish to give evidence from some other location, the court may not make an order requiring the child to give evidence in the court, unless this would prejudice the fairness of the trial or the interests of justice.

Section 11 – Reporting of proceedings involving children

35. This section amends restrictions on reporting proceedings involving children in section 47 of the 1995 Act so that they apply to a person under 18, rather than under 16. Section 47 of the 1995 Act puts certain restrictions on newspapers to prevent them revealing the identity of persons under 16 who are involved in criminal proceedings (as the person against or in respect of whom the proceedings are taken, or as a witness). However, the court has discretion to dispense with these requirements if it is satisfied that it is in the public interest to do so. The provisions also apply to sound and television programmes.

Section 12 – Other vulnerable witnesses: assessment and application

36. The section provides that any party intending to cite a witness, other than a child or deemed vulnerable witness, must take reasonable steps to determine whether they are likely to be vulnerable and if so, what special measures should be used in order to take that person's evidence. It also sets out the matters to be considered in making an assessment of vulnerability which include the nature and circumstances of the alleged offence, the nature of the evidence likely to be given, the person's age and maturity, along with any other matters the court considers relevant including, social and cultural background and ethnic origins, sexual orientation and any physical disability or impairment.

Section 13 – Objections to special measures: other vulnerable witnesses

37. This section amends the 1995 Act to allow any party to criminal proceedings to object to a vulnerable witness application requesting special measures for a witness who is not a child witness or deemed vulnerable witness. The process involved is similar to that set out for objection notices in section 9. An "objection notice" must be lodged with the court within seven days (or later with the permission of the court) of a vulnerable witness application being lodged, setting out any objection to the special measures in the application that the party considers inappropriate and the reason for their objection.

38. If a notice under this section is lodged, the court must make an order that the notice must be considered at the appropriate diet (depending on the level of the court). Subsections (b) and (c) make the necessary consequential changes to sections 271C(5) of the 1995 Act so that the time limit for the court's consideration of a vulnerable witness application is extended to take account of the possibility of an objection notice being lodged and to section 271C(11) of the 1995 Act to include intimation by the party lodging the objection notice to special measures to other parties to the proceedings as they do at present in relation to an application for special measures.

Section 14 – Review of arrangements for vulnerable witnesses

39. Section 271D(1)(a) of the 1995 Act currently allows a party citing or intending to cite a witness to request that the court review the arrangements for taking the witnesses evidence. Section 14 expands this ability to any party to the proceedings so that the non-citing party (normally the defence) can also request the court to review these arrangements.

Section 15 – Temporary additional special measures

40. Section 271H of the 1995 Act specifies a range of special measures that may be used to assist vulnerable witnesses to give their evidence to the court. Section 15 allows the Scottish Ministers to create additional special measures by order for a temporary period. This may be used to pilot additional special measures before any decision on whether or not to introduce these more widely (section 17 deals with order making powers to prescribe further special measures). The order must specify where the temporary special measure should take place, the procedures to be used, and for how long it should operate. The order can also set out in what type of proceedings and in what circumstances the additional special measures are to be used.

Section 16 – Special measures: closed court

41. This section amends the list of special measures in section 271H(1) of the 1995 Act, to add an additional special measure of having a closed court (i.e. excluding the public during the taking of evidence from the vulnerable witness). Section 16 also inserts a description of how this new special measure is to operate, providing that members or officers of the court, parties to the case before the court, counsel or solicitors or other persons otherwise directly concerned in the case, bona fide representatives of news gathering or reporting organisations present or such other persons as the court may specially authorise to be present should not be excluded from the court.

42. Section 16 also amends section 271F(8) of the 1995 Act so that this special measure does not apply where the vulnerable witness is the accused.

Section 17 – Power to prescribe further special measures

43. This section repeals the existing order making power in section 271H which allows the Scottish Ministers to prescribe further special measures. It inserts section 271H(1)(1A) which enables the Scottish ministers to add new special measures, amend or delete existing special measures and also modify sections 271A – 271M which detail how such special measures are to operate (see explanation of these sections under section 8).

Section 18 – Vulnerable witnesses: civil proceedings

44. This section amends the definition of a “child witness” in civil proceedings in section 11 of the Vulnerable Witnesses (Scotland) Act 2004 to include anyone under the age of 18 (currently this definition only includes those under 16). It also inserts an order making power to allow the Scottish Ministers to extend the definition of vulnerable witness to include specified types of witnesses, and witnesses in specified types of actions. This is the only section in the Bill which relates to civil proceedings, rather than criminal proceedings.

Victim statements

Section 19 – Victim statements

45. Victim statements allow victims and close relatives to tell the court about the physical, emotional and financial impact of a crime on them. Section 14 of the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”) sets out the arrangements for the submission of victim statements in court. In solemn proceedings, a victim statement is laid before the court when moving for sentence. Section 19 of the Bill allows victim statements to be submitted to the court at any time after the prosecutor moves for sentence (or the accused pleads guilty or is found guilty), but before sentence is passed. This is to ensure that, if the statement is not available at the time of the guilty plea, this does not prejudice the victim in the case. This section also changes victim statement arrangements in relation to children under the age of 14. At present, children under the age of 14 are entitled to have a victim statement made on their behalf by a carer only if they are the *direct* victim of crime. The Bill provides that a child under the age of 14 who is not the direct victim of the crime (for example, a child whose parents have been killed) can have a victim statement made on their behalf by a carer.

Sentencing

Section 20 – Duty to consider making compensation order

46. This section amends section 249 of the 1995 Act to provide that, in cases where the court could make a compensation order, it must consider whether to do so. Currently, there is no obligation for the court to consider doing so in relevant cases. Relevant cases include, as defined in section 249 of the 1995 Act, those where the offender has caused any personal injury, loss or damage either directly or indirectly to the victim (but not cases which result in death or are linked to a motoring accident, unless the offender was using the vehicle unlawfully).

Section 21 – Restitution order

47. This section inserts new sections 253A - 253E into the 1995 Act, to deal with the establishment and operation of restitution orders.

48. Subsection (1) of new section 253A establishes that that section shall apply to persons who are convicted of assault on police or police staff, as provided for in the offence in section 90(1) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”).

49. Subsection (2) establishes the restitution order alongside other penalties (such as imprisonment, fines, Community Payback Orders etc) as a penalty to which persons convicted under section 90(1) of the 2012 Act are liable. It also sets the upper limit of these orders in line

with the prescribed sum (as defined in section 225(8) of the 1995 Act). Subsection (3) establishes that the Scottish Ministers have the power to vary this upper limit. This power is to be exercised, in terms of subsection (5), through the negative procedure.

50. Subsection (4) requires that the proceeds of restitution orders are to be paid to the clerk of court or any other person authorised by the Scottish Ministers. This is the same as for fines.

51. Subsection (1) of new section 253B establishes that the person to whom, under new section 253A(3) the proceeds of a restitution order are paid, must pass those proceeds on to the Scottish Ministers. Subsection (2) provides that, in turn, the Scottish Ministers must pass on the proceeds to a new fund, to be called the Restitution Fund.

52. Subsection (3) provides for the establishment of the Restitution Fund for the purpose of securing the provision of support services to police officers and staff who have been the victim of criminal assaults, and subsection (4) ensures that payments may be made only for that purpose. Subsection (8) defines that “support services” mean, in relation to a victim, any type of service or treatment which is intended to benefit the physical or mental health or well-being of the victim.

53. Subsection (5) allows the Scottish Ministers to contract the establishment and operation of the Restitution Fund to another individual or body. Subsection (6) allows the Scottish Ministers to set rules and directions for the operation and administration of the Restitution Fund, including who may benefit from it, payments out of it, and its record keeping and reports. Both these powers are to be exercised, in terms of subsection (7), through the affirmative procedure.

54. Subsection (1) of new section 253C introduces the possibility that a person found guilty of an offence under section 90(1) of the 2012 Act may have a sentence imposed which could include three different financial penalties: a restitution order, a fine and a compensation order. The convicted person may have insufficient means to pay all three. In this case, in accordance with subsection (2), the court is to prefer imposing a compensation order, then a restitution order, and finally a fine.

55. Subsection (3) applies where a court considers it would be appropriate to impose two financial penalties; a restitution order and either a compensation order or a fine. In this case, under subsection (4), where the convicted person may have insufficient means to pay both, again the court should consider imposing a compensation order before a restitution order, and a restitution order before a fine.

56. Subsection (1) of new section 253D applies where a court has actually imposed a restitution order and either or both of a compensation order and a fine. Subsection (2) adopts the same logic as in new section 253C, and ensures that any payment made by the convicted individual is applied first to any compensation order, until such time as it is fully paid, then to any restitution order, until such time as that has been full paid, and then to any fine.

57. Subsection (1) of new section 253E states that a number of provisions in the 1995 Act shall apply to restitution orders in the same way as they do to fines. The provisions in question

are listed in subsection (2). These include matters to do with the enforcement (sections 211 and 212 of the 1995 Act, remission (section 213), part-payment (section 220), recovery (section 221), transfer (sections 222 and 223) and mutual recognition of fines (sections 223A-T), as well as what to do in the case of default (section 216) and provisions about time for their payment (sections 214 and 215), disqualification from driving (section 248B) and imprisonment as means of enforcement or punishment for default (section 219), and discharge (section 224). All these are to apply to restitution orders as well as to fines. Subsection (3), moreover, provides that a court may impose imprisonment as a means of punishing default on payment of a fine, but decline to do so for a restitution order but not *vice versa*. In addition, by virtue of that subsection, where imprisonment is used to punish default on payment of both a fine and a restitution order their amounts shall be aggregated to establish the appropriate duration of that imprisonment.

Section 22 – Victim surcharge

58. This section inserts sections 253F to 253J into the 1995 Act, establishing a victim surcharge and providing for its operation.

59. Section 253F provides that the court must impose a victim surcharge on offenders who are subject to any sentence prescribed by the Scottish Ministers by regulations. However, a victim surcharge is not to be imposed where a restitution order has been imposed, or where the Scottish Ministers have set out, by regulations, that this is not the case for the particular offence (or class of offence) in question. The Scottish Ministers may, by regulations, set out the amount of the victim surcharge, which can be different for different types of offender or for different circumstances (for example, this would allow a scale of surcharge amounts to be established, to reflect different sentences imposed). The Scottish Ministers may also, by regulations, set out circumstances in which the court is not to impose a victim surcharge. Subsection (3) sets out that if a person is convicted of multiple offences in the same proceedings, there will only be one surcharge imposed. Subsection (4) sets out that the surcharge is to be ingathered by the clerk of court or any other person authorised by the Scottish Ministers.

60. Section 253G establishes the Victim Surcharge Fund (VSF). Subsections (1) and (2) provide that the person who collects the victim surcharge (SCS, unless the Scottish Ministers authorise anyone else for this purpose under section 253F(4)) must pass the sum collected to the Scottish Ministers; and that the Scottish Ministers must then pay this amount into the VSF. The Scottish Ministers are given an order making power in section 253G(6) to prescribe how the fund will be administered. Subsection (4) sets out that the VSF can only be used to make payments to victims, or to those who provide or secure the provision of services to victims. Subsection (5) allows the Scottish Ministers to delegate responsibility for establishing and administering the VSF to a third party. Subsection (8) provides a definition of “support services”; such services might, for example, include financial assistance to fit or repair security locks, or the replacement of essential furnishings damaged during the course of a criminal offence.

61. Section 253H details the order in which payments must be made when an offender incurs more than one financial penalty in relation to the same proceedings. Payments must be made towards any direct compensation order to the victim, then to the victim surcharge, then the fine.

62. Section 253J provides that the provisions in the 1995 Act listed in subsection (2) shall apply to the victim surcharge in the same way as they do to fines. As with restitution orders (see

paragraph 57), these include matters to do with the enforcement, remission, part-payment, recovery, transfer and mutual recognition of fines, as well as what to do in the case of default and provisions about time for their payment, disqualification from driving and imprisonment as means of enforcement or punishment for default, and discharge. All these are to apply to the victim surcharge as well as to fines. Subsection (3), moreover, provides that a court may impose imprisonment as a means of punishing default on payment of a fine, but decline to do so for the victim surcharge but not *vice versa*. In addition, by virtue of that subsection, where imprisonment is used to punish default on payment of both a fine and the victim surcharge their amounts shall be aggregated to establish the appropriate duration of that imprisonment.

Release of offender: victim's rights

Section 23 – Victim's right to receive information about release of offender etc.

63. At present, victims of certain prescribed offences can receive information about the release of offenders (and some other relevant information) under section 16 of the 2003 Act. The information relates to the circumstances in which a prisoner leaves prison. This may be due to temporary release, an escape, transfer to a prison outwith Scotland, release on licence or parole, death of the prisoner or end of sentence. Section 23 amends section 16 of the 2003 Act to remove the list of prescribed offences. As a result, victims of any offence will be able to receive information under this section.

Section 24 – Life prisoners: victim's right to make oral representations before release on licence

64. This section amends section 17 of the 2003 Act to enable victims to make oral representations to the Parole Board, as well as written representations as at present, when a prisoner becomes eligible for release on licence. This will only apply to life prisoners initially, but an order making power is also inserted to allow the Scottish Ministers to extend this ability in relation to other categories of prisoner.

65. Subsection (b) amends section 17 of the 2003 Act to provide that the Scottish Ministers can set out, in guidance, how both written and oral representations should be made (currently this power to issue guidance only relates to written representations). Subsection (c) inserts subsection 10A into section 17 of the 2003 Act. This allows the Scottish Ministers, when setting a time limit for representations to be made, to set different time limits for written and oral representations.

Section 25 – Temporary release: victim's right to make representations

66. This section adds a new section to the 2003 Act to allow victims, who are registered on VNS and who have expressed the wish to do so, to make written representations about the licence conditions that may be imposed when a prisoner first becomes eligible for temporary release from prison.

National Confidential Forum

Section 26 – 4ZA – National Confidential Forum

67. Section 26 establishes the National Confidential Forum (“the Forum”; “NCF”) as part of the Mental Welfare Commission for Scotland (“the Commission”).

68. The legislation under which the Commission currently operates (Part 2 and Schedule 1 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) as amended by the Public Services Reform (Scotland) Act 2010) is amended accordingly. Sections 4ZA, 4ZB, 4ZC, 4ZD and schedule 1A, comprising Parts 1-7, are inserted into the 2003 Act.

69. Section 26 inserts section 4ZA into the 2003 Act to require the Commission to establish and maintain a committee of the Commission to be known as the National Confidential Forum.

Section 26 – 4ZB – General functions of NCF

70. Section 26 sets out the general functions of the Forum in a new section 4ZB of the 2003 Act (referred to as the “NCF functions”). The principal function of the Forum is to give people who were placed in institutional care as children the opportunity to describe, in confidence, their experiences of that care, including any abuse experienced during the time spent in care. The descriptions of being in care which people will recount to the members of the Forum are referred to as “testimony”.

71. The Forum is to acknowledge the experiences of people placed in institutional care as children by enabling them to give testimony at hearings of the Forum or in other ways, for example, in writing or by video or phone link.

72. A further function of the Forum is to identify patterns and trends in relation to institutional child care provision, including issues concerning abuse, based on the information provided to it by participants and, subsequently, to make recommendations for the improvement of institutional child care provision in the future.

73. The Forum is also empowered to produce reports on its work and any recommendations arising from the information it receives from people placed in institutional care as children. These reports will be available to the public but the identity of participants in the Forum, other persons and institutions will not be disclosed.

74. The final function of the Forum is to provide people who are considering taking part, and those who do take part, in hearings of the Forum information about sources of assistance and advice.

Section 26 – 4ZC – Carrying out NCF functions

75. Section 26 inserts section 4ZC into the 2003 Act to require, in section 4ZC(1), the Commission to delegate the functions, set out above, to the Forum. This requires the NCF functions to be delegated to a distinct entity within the Commission, enabling a significant

degree of operational independence for the Forum within the accountability structure of the Commission.

76. Section 4ZC(2) provides that the person appointed to chair the Forum (the “NCF Head”) is to account to the Commission for the work of the Forum in discharging its functions effectively.

77. Section 4ZC(3) makes explicit that, despite the delegation of functions and the accountability of the Head of NCF, the Commission will retain responsibility for ensuring that the Forum carries out its functions.

Section 26 – 4ZD – Further modifications in relation to NCF

78. Section 26 inserts section 4ZD into the 2003 Act.

79. Section 4ZD(1)(a) sets out which functions and duties currently undertaken by the Commission will not apply to the Forum. In particular, the duty to monitor Part 1 of the 2003 Act, to bring to the attention of the Scottish Ministers matters concerning the operation of that legislation and to advise on such matters, do not apply to the Forum. The functions of the Commission relating to the publishing of information (including statistical information), particularly about investigations and inquiries, are also expressly disapplied by section 4ZD(1)(a).

80. Section 4ZD(1)(c) bars the Commission from publishing anything in its annual report that could identify or lead to the identification of a person in institutional care as a child, a person who experienced or committed abuse or an establishment providing institutional care.

81. Section 4ZD(1)(d) inserts section 20(1A) into the 2003 Act to offer protection to the Forum, its members and staff, and participants from an action for defamation.

82. The effect of this protection is that the Forum, and its members and staff, will not be able to be sued for defamation as a result of statements they make, in good faith, while carrying out the work of the Forum. This is akin to the protection provided to Commissioners and staff of the Commission.

83. The protection offered to participants in the Forum from an action for defamation is in relation to any statement they make to the Forum and is, therefore, a higher level of protection than that offered to the Forum, its members and staff. This level of protection is to ensure that people who come forward to participate in the Forum can be assured in advance that what they say in information provided to the Forum cannot be used by anyone to found an action of defamation.

84. Section 4ZD(2) amends the Public Records (Scotland) Act 2011 to insert a new subsection (8) into section 1 of that Act to require the Commission to prepare a records management plan in relation to the NCF functions. This is to be separate from the Commission’s records management plan to further safeguard the confidentiality of testimony and other information given to the Forum by people placed in institutional care as children.

Section 27 – NCF: constitution and operation

85. Section 27(1) extends the maximum membership of the Commission from 8 to 9 members to enable the appointment of an additional Commissioner, selected specifically for their skills, experience and knowledge as considered by the Scottish Ministers to be relevant to the work and functions of the Forum.

Section 27 – Schedule 1A

86. Schedule 1A is introduced by section 4ZA(2) and is inserted into the 2003 Act by section 27(2).

Schedule 1A – Part 1 – Members of the National Confidential Forum

87. Part 1 sets out the membership of the Forum, the appointment of its members and staff and the powers and procedure of the Forum.

Membership

88. Paragraph 1(1) provides that the Forum is to consist of the NCF Head and no fewer than two other members, all of whom will be appointed by the Scottish Ministers.

89. Paragraph 1(2) provides that the Scottish Ministers must make these appointments having regard to the recommendation of the selection panel (mentioned in paragraph 2(2)). Each member of the Forum is to be appointed for such period as the Scottish Ministers think fit (paragraph 1(3)).

90. Paragraph 1(4) provides that members of the Forum may resign by providing written notice to the Scottish Ministers, and that the Scottish Ministers must then inform the Commission of any such resignation (paragraph 1(5)).

Membership selection panel

91. Paragraph 2(1) provides that members of the Forum are to be selected by a membership selection panel, the composition of which is set out in that paragraph. The Scottish Ministers are able to determine, in addition to the members of the selection panel set out in paragraph 2(1), that others be included in that selection panel.

92. Paragraphs 2(2), (3) and (4) provide that a membership selection panel is to determine the selection process and can recommend for appointment those who, in the panel's view, have the skills, knowledge and experience to carry out the work of the Forum (excluding members of the Commission).

National Confidential Forum staff

93. Paragraph 3 provides that the appointment of staff to the Forum requires the recommendation of the Forum Head and that such staff are only to carry out the functions of the Forum.

Powers and procedure of the National Confidential Forum

94. Paragraph 4(1) empowers the Forum to do anything which is necessary or expedient in order for it to carry out its functions.

95. Paragraph 4(2) specifically empowers the Head of the Forum to determine the procedure of the Forum, having regard to the views of the other members of the Forum. This reflects the leadership role held by the NCF Head.

96. Paragraph 4(3) sets out the requirement that the Forum should have regard to the need to avoid any unnecessary cost to public funds, to participants and others in undertaking its work and carrying out its functions.

97. Paragraph 4(4) provides that proceedings of the Forum will not be invalidated because of a vacancy in the membership or a defect in the appointment of a member.

98. Paragraph 4(5) specifically excludes members of the Scottish Government or others authorised by the Scottish Government from taking part in the meetings of the Forum.

Application of schedule 1 to the National Confidential Forum

99. Paragraph 5 disapplies certain powers of the Commission in relation to the Forum.

Schedule 1A – Part 2 – Delegation of functions

100. Part 2 sets out arrangements for the delegation of the NCF functions.

Delegation by the National Confidential Forum

101. Paragraph 6 requires the Forum to delegate its functions to the NCF Head, other members of the Forum or staff, the extent of which is to be determined by the NCF Head.

102. Paragraph 6 also enables the delegation of functions by the Forum to the NCF Head, other members of the Forum or staff, the extent of which is to be determined by the Forum.

103. Paragraph 6 makes explicit that such delegation does not affect the Forum's responsibility, or the accountability of the NCF Head, for the functions of the Forum.

Schedule 1A – Part 3 – Eligibility to participate in the National Confidential Forum

104. Part 3 sets out who will be eligible to participate in the Forum.

105. Paragraph 7(1) provides that the Forum may hear testimony from people who have made an application to participate in a hearing of the Forum and whose application has been accepted.

106. Paragraph 7(2) provides that any person aged 18 or over, who was placed in an establishment providing institutional care as a child, for any length of time and who is no longer in that care, may apply to participate in the Forum.

107. Paragraph 7(3) provides that the term “institutional care”, for the purposes of the Forum, means a care or health service which provided residential accommodation to children in Scotland.

108. Paragraph 7(3) allows the Scottish Ministers to prescribe by order the specific types of care and health services which meet the conditions set out in paragraph 7(4), not including services provided at premises used mainly or wholly as a private dwelling. This excludes the supervision of children at home, foster care and kinship care from the scope of the Forum.

Schedule 1A – Part 4 – Conduct of Hearings

109. Part 4 sets out how the hearings of the Forum will be conducted.

110. Paragraph 8(2) requires the Forum to make arrangements for participants to give testimony, either at a hearing of the Forum or by other means and in writing or orally.

111. Paragraph 8(3) requires that at least two members of the Forum be present at a hearing and that hearings be held in private.

112. Paragraph 8(4) explains that a Forum hearing is defined as being ‘private’ provided no one other than the person giving testimony, anyone accompanying that person and members of the Forum and Forum staff are present.

113. Paragraph 8(5) enables the Forum to determine its own procedures for hearing testimony, otherwise than is provided for in paragraph 8. This is subject to the duty to avoid any unnecessary cost to public funds, to participants and others in undertaking its work and carrying out its functions.

Recording of testimony

114. Paragraph 9 provides that the Forum may decide how it will record testimony and any other information it receives from persons who take part in hearings. In practice, this may include audio recording or recording in writing and could be undertaken with the participant face-to-face or remotely.

115. Paragraph 9(2) sets out a requirement that the Forum take steps, as soon as reasonably practicable, to organise the information it receives so as to preserve confidentiality, in particular the anonymity of the person giving the testimony and any other individuals or institutions mentioned in testimony.

Payment of expenses

116. Paragraph 10 authorises the Forum to require the Commission to pay reasonable expenses to participants, and those who accompany participants, to Forum hearings. This will comprise travel and subsistence associated with participation in the Forum.

Schedule 1A – Part 5 – Reporting

117. Part 5 sets out arrangements by which the Forum may prepare reports and is required to produce an Annual Report.

118. Paragraph 11 empowers the Forum to prepare reports based on the information provided to it at hearings and in other ways. A report produced by the Forum must not include information which could lead to the identification of people who were placed in institutional care as children, anyone alleged to have committed abuse or institutions where abuse is alleged to have taken place. Reports of the Forum must also not include any other information that is subject to a confidentiality restriction set out in paragraph 13 (below).

119. Paragraph 12 requires the Forum to prepare a report each year on progress made in discharging the functions of the NCF (covering the 12 month period up to the end of March) and to submit that report to the Scottish Ministers. Annual Reports of the Forum are subject to the same requirements of confidentiality which apply to the other reports produced by the Forum.

120. Paragraph 12(2) provides that the Forum must consult the Commission before preparing its Annual Report and paragraph 12(4) requires the Forum to send a copy of its Annual Report to the Commission.

121. Paragraph 12(5) provides that the Scottish Ministers must lay before the Scottish Parliament a copy of each Annual Report of the Forum.

Schedule 1A – Part 6 - Confidentiality

Prohibition on disclosure

122. Part 6 sets out arrangements to ensure the confidentiality, as far as possible, of information obtained by the Forum in the course of carrying out its functions.

123. Paragraphs 13(1) and (2) make express provision that certain persons listed are not to disclose information provided to them in connection with the work of the Forum and which is not otherwise in the public domain.

124. Paragraph 13(3) does not prevent the disclosure of information between the persons listed in paragraph 13(1) where this is necessary to carry out the work of the Forum, including the preparation of a report in accordance with paragraph 11 (as set out above).

125. Paragraph 13(4) sets out the circumstances in which a member of the Forum must disclose information to the police. Information must be disclosed to the police where, in the opinion of the member acting in good faith, such disclosure is reasonably necessary to prevent the commission of an offence involving the abuse of a child.

126. Paragraph 13(5) enables a member of the Forum to disclose information to the police where an allegation is made by a person who has given testimony that an offence involving the abuse of a child has been committed. Disclosure is made to the police in these circumstances

where it is, in the opinion of the member of the Forum acting in good faith, in the public interest to do so.

127. Paragraph 13(6) provides that a court may order the disclosure of information held by the Forum for the purposes of legal proceedings, whether civil or criminal (including for the purposes of the investigation of any offence or suspected offence), if it is satisfied that such disclosure is necessary in the interests of justice.

Schedule 1A – Part 7

128. Paragraph 14 sets out definition of terms used in schedule 1A.

General

Section 28 – Interpretation

129. Section 28 provides for the interpretation of various terms used in the Bill.

Section 29 – Ancillary provision

130. This section provides the Scottish Ministers with the power to make, by order, such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate. It provides that an order under this section may modify this, or any other, enactment.

Section 30 – Commencement

131. This section provides for the commencement of the provisions in the Bill.

FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Victims and Witnesses (Scotland) Bill introduced in the Scottish Parliament on 6 February 2013. It has been prepared by Kenny MacAskill MSP, who is the member in charge of the Bill, 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 Bill and its policy intentions. 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 deals with two broad topics:
 - reforms to the justice system relating to victims and witnesses, the costs of which are dealt with in **Part A**; and
 - the establishment of a National Confidential Forum (NCF) for adults placed in institutional forms of care as children, dealt with in **Part B**.
4. For many of the potential costs described in the Financial Memorandum, particularly those relating to the victims and witnesses reforms, there is a significant margin of uncertainty. Where this is the case, a range of figures has been given, identifying the lowest and highest likely costs to be incurred as a result of the proposal in question.
5. In relation to the victims and witnesses reforms, set up costs are expected to arise in 2014/15, with recurring costs also beginning that year. However, full recurring costs are not likely to arise until 2015/16, as there will be a phased implementation of the Bill throughout 2014/15. In relation to the NCF, some set up and recurring costs will arise in 2013/14. Full recurring costs are expected to arise from 2014/15 onward.
6. A table providing an overall summary of the financial impact of the Bill is included on page 52.

PART A – VICTIMS AND WITNESSES REFORMS

Overview

7. The Bill will have financial implications for a number of bodies. These will primarily affect the Scottish Court Service (SCS), the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Prison Service (SPS), and the Parole Board for Scotland (PBS).

8. There will also be some moderate financial implications for the Scottish Government, the Scottish Police Authority (SPA), the Scottish Children's Reporter Administration (SCRA) and the Legal Aid Fund, which is administered by the Scottish Legal Aid Board (SLAB). The Scottish Government has consulted with the relevant organisations on the likely financial impact.

9. The measures which will have the greatest financial implications are:

- reforms relating to vulnerable witnesses and the use of special measures;
- the introduction of the victim surcharge and restitution orders;
- the extension of the Victim Notification Scheme (VNS) and ability to make representations about temporary release; and
- the introduction of an ability to make oral representations when a prisoner is eligible for parole.

10. While there will be some limited capital costs, most of the potential financial effects will arise from additional administrative work. The Bill contains various other measures, but these are likely to have no or marginal costs.

11. The total costs of this part of the Bill, by organisation and by measure, are set out in tables 1 and 2 respectively, followed by details of how the measures will be funded. A brief outline of the various measures in the Bill is given, followed by a detailed breakdown of costs on each organisation.

12. For the purposes of this Financial Memorandum all figures given presume a commencement of provisions in financial year 2014/15. The estimates of costs contained in this memorandum are compiled from information provided by those bodies affected. The figures and projections provided are the best current 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 £100.

*Table 1 - Cost by organisation**

| Body | Non-recurring costs (£) | Recurring costs – Min (£ per year) | Recurring costs - Max (£ per year) |
|---|--------------------------------|---|---|
| COPFS | - | 300,000 | 324,500 |
| SCS | 92,800 | 369,000 | 502,500 |
| SPS | 31,000 | 112,000 | 146,300 |
| PBS | - | 23,400 | 87,200 |
| SLAB (Legal Aid Fund) | - | 6,000 | 26,700 |
| SCRA | | 1,100 | 1,100 |
| SCOTTISH ADMINISTRATION TOTAL (COPFS, SCS and SPS) | 123,800 | 781,000 | 973,300 |
| TOTAL | 123,800 | 811,500 | 1,088,300 |

* Costs on the SG and SPA are marginal and have not been included in this table.

Table 2 - Cost by proposal

| Proposal | Non-recurring costs (£) | Recurring costs – Min (£ per year) | Recurring costs - Max (£ per year) |
|---|--------------------------------|---|---|
| Reforms relating to vulnerable witnesses and special measures | 70,800 | 536,600 | 690,800 |
| Introduction of victim surcharge and restitution orders | 22,000 | 115,000 | 115,000 |
| Extension of Victim Notification Scheme and ability to make representations about temporary release | 31,000 | 136,500 | 195,300 |
| Ability to make oral representations to Parole Board | - | 23,400 | 87,200 |
| TOTAL | 123,800 | 811,500 | 1,088,300 |

FUNDING

13. The measures in the Bill will result in costs on COPFS, SCS, SPS, PBS, the Legal Aid Fund, and SCRA (with marginal costs on some other bodies). Funding of these costs has been discussed with the relevant bodies.

14. COPFS has recently reviewed the procedures it uses to apply for special measures for vulnerable witnesses and considers that these can be simplified, resulting in significantly lower costs. It is anticipated that the additional expenditure resulting from the Bill (of around £300k per year) will be offset by savings made through this streamlining process, and that there will be no overall increase in funding required.

15. Costs on SCS for financial year 2014/15 will be met from within existing Scottish Government budgets. Funds are available to cover the capital costs identified (around £93k), and approximately half of the recurring yearly costs (of between £369k and £503k per year). This is considered sufficient for 2014/15, as there will be a phased implementation of the Bill throughout that year and so full recurring costs will not be incurred until the following year at the earliest. To address costs in 2015/16 onwards, any rise in the overall running costs of SCS will be reviewed as part of the overall planning for the Justice budget.

16. Costs on the Parole Board and on SPS for 2014/15 will be met from within existing budgets. As with SCS, any rise in overall costs will be reviewed as part of the overall planning for the Justice budget for 2015/16 onwards.

17. The costs on the Legal Aid Fund, which the Scottish Government is under a statutory obligation to meet, are reasonably minor and are not expected to have any significant impact on overall expenditure.

18. Finally, costs on SCRA are relatively small, and will be met from within existing organisational budgets.

OUTLINE OF MEASURES

Measures with cost implications

19. Those measures which will have definite financial implications are outlined below.

Vulnerable witnesses and special measures

20. The Bill extends the definition of vulnerable witness and the entitlement to certain special measures to assist such witnesses give evidence. Costs will arise from changes to court procedures and facilities available, and will fall primarily on SCS and COPFS.

Victim surcharge and restitution orders

21. A victim surcharge will be imposed on certain offenders, and the proceeds used to support victims. Costs will arise primarily from the collection of the surcharge, which will fall

on SCS, and in relation to administration of the fund (details of which will be set out in subordinate legislation).

22. The courts will be able to impose restitution orders in cases where the offender has assaulted a police officer, and the funds raised will contribute to the support services which assist in their recovery. Costs will arise primarily from the collection of restitution orders, which will affect SCS, and from the administration of the fund, which will be carried out by the Scottish Government.

Extension to Victim Notification Scheme and written representations about temporary release

23. The VNS, which notifies certain victims when the relevant offender is released from prison (and supplies some other information) is being extended to encompass more victims (part of this extension is an indirect cost, which is set out in more detail in the relevant sections of this memorandum). Costs will primarily fall on SPS and COPFS. There may also be some minor costs to the Scottish Government.

24. SPS advises victims registered on the VNS when an offender is first eligible for temporary release. Changes are being made to allow victims to make written representations about the offender's release. Minor costs will fall on SPS.

Oral representations to the Parole Board for Scotland

25. Oral representations to PBS are being introduced to assist those victims who would prefer to make their views known orally rather than by submitting written representations. The cost of accepting and dealing with such oral representations will fall on PBS. There may also be some marginal costs to the Scottish Government.

Measures with no or marginal costs

26. The measures in the Bill which are expected to have no or marginal cost implications are summarised below.

General Principles

27. The Bill sets out high level overarching principles which outline the general aims of the Bill, and imposes a duty on a number of organisations within the justice system to have regard to these principles when carrying out their functions, in so far as they relate to victims and witnesses. This duty is not expected to require any additional resources; while the principles will inform how bodies carry out relevant functions, it is not anticipated that significant changes will be required.

Standards of service

28. A number of organisations within the justice system will be required to develop and set out clear standards of service for victims and witnesses, and to set out an effective complaints procedure. It is unlikely that this will require a significant amount of work, and the cost implications are expected to be marginal (mostly relating to costs associated with revising guidance leaflets, web based information etc.).

Compensation orders

29. A compensation order may currently be imposed either instead of or in addition to any other punishment to be imposed on the convicted person. The Bill will require the court to consider making a compensation order in every case where such an order could be imposed. This is not expected to have any significant cost implications.

Access to case specific information

30. Victims and witnesses will be given the right to certain information about their case on request, from SCS, COPFS and the police. These organisations already provide much of this information, and so the costs are not expected to be significant. However, this is difficult to estimate with any certainty, as it is unclear whether requests for information will increase as a result of the Bill (and if so, by how much).

Duty to have regard to guidance on Joint Investigative Interviews

31. Existing guidance on Joint Investigative Interviews (JIIs) will be put on a statutory basis to ensure that those carrying out such interviews (social workers and the police) have regard to it. As the guidance already exists and is in use, no costs are expected.

Removal of presumption that child witnesses aged under 12 will give evidence away from court building

32. The Bill makes a minor amendment to existing legislation to ensure that there is no presumption that a child *must* give evidence away from the court building. No costs are expected.

Right for victims of sexual violence to choose gender of interviewer

33. The Bill gives victims of sexual violence the right to choose the gender of their interviewer. This will affect the police (who will need to ensure that interviewers of both genders are available), but no costs are expected.

Victim statements - increased flexibility in timing

34. The Bill allows slightly more flexibility in relation to the timing of submitting victim statements. This may have some administrative impact on SCS, but no costs are expected.

Victim statements - extension of eligibility

35. The Bill will ensure that victim statements can be made on behalf of those under the age of 14. No costs are expected.

COSTS ON THE SCOTTISH ADMINISTRATION

36. Costs on the Scottish Administration will fall on the Scottish Government, COPFS, SCS and SPS. These are set out separately below. Total non-recurring costs on the Scottish Administration will be around **£123,800**, and total recurring costs will be between **£781,000** and **£973,300** per year.

SCOTTISH GOVERNMENT

37. A number of the measures in the Bill will have an effect on the Scottish Government, but these are all expected to involve no or marginal costs.

Measures with no or marginal costs

Victim Notification Scheme

38. The extension of the VNS will have a minor effect on the Scottish Government, in that any changes will need to be reflected in information leaflets produced. However, this will be achieved during the usual re-printing cycle, and so there will be no additional cost.

Oral representations to the Parole Board

39. The Parole Unit within the Scottish Government issues a letter to victims when a prisoner is due to be considered for parole or release on non-parole licence. While some minor changes may be required to reflect the introduction of oral representations, it is anticipated that costs will be marginal and can be absorbed within current resources.

Victim surcharge

40. Revenue raised by the victim surcharge will be collected by SCS and passed to the Scottish Government. The Scottish Government will then transfer the funds to the body which administers the victim surcharge fund (to be determined in secondary legislation). There will also be some work required in monitoring the fund, and considering regular reports from the body which administers it. The minor additional work required will be met from within existing resources.

Restitution orders

41. As with the victim surcharge, revenue raised by restitution orders will be collected by SCS and passed to the Scottish Government. However, in the case of restitution orders, the fund created will be administered by the Scottish Government, which will distribute money for purposes to be set out in subordinate legislation. The number of recipients is expected to be very small, however, and it is anticipated that the administration of the fund can be met from within existing resources.

General principles

42. The general principles will apply to, among others, SPS and COPFS. As SPS is an executive agency and COPFS is a Ministerial department of the Scottish Government, the duty to have regard to the principles must be placed upon the Scottish Ministers and the Lord Advocate respectively. However, the cost implications are dealt with below in relation to SPS and COPFS separately.

Standards of service

43. As with the general principles, the duty to set out standards of service is intended to apply to SPS and COPFS, but must be applied to the Scottish Ministers and the Lord Advocate respectively. Again, the cost implications are described below in relation to SPS and COPFS.

CROWN OFFICE AND PROCURATOR FISCAL SERVICE

44. Costs to COPFS will arise from the package of measures around vulnerable witnesses and special measures, and from the extension to the VNS. COPFS will also be affected by a number of other proposals, which are expected to have no or minimal cost.

45. It is estimated that the total recurring costs to COPFS will be between **£300,000 and £324,500 per year**.

Measures with cost implications

Vulnerable witnesses and special measures - overview

46. The changes in the Bill will result in increased numbers of witnesses automatically entitled to the use of special measures, and potential increases in the numbers applying for the use of such measures. This will increase costs in relation to the processing of applications and notices which must be submitted to the court, and the actual use of special measures. In addition, the Bill will introduce the ability for either party to object to an application or notice for special measures, which will require additional court time.

Vulnerable witnesses and special measures – costs relating to notices/applications

47. At present, any child witness under 16 is automatically entitled to the use of certain standard special measures when giving evidence. Other witnesses may also benefit from special measures, although this is not an automatic entitlement. The Bill seeks to extend the right to automatic entitlement to special measures to certain categories of victims and witnesses. These are:

- 16 and 17 year olds (through the extension of the definition of child witness)
- victims of a sexual offence
- victims of domestic abuse
- victims of stalking
- victims of human trafficking

48. As this is likely to increase significantly the number of witnesses who will benefit from the use of special measures, COPFS has assessed whether it is possible to streamline the current application process. This would seek to remove the requirement to fill out a detailed notice in the situation where a victim was automatically entitled to the use of a special measure in any event. This would ensure that all victims and witnesses were notified at the earliest opportunity that they were entitled to the use of a special measure, providing reassurance about the court process at any early stage.

49. This revised process will ensure that victims receive a timely and individual assessment to identify specific protection needs and to see if they would benefit from the special measures, as specified in the EU Directive establishing minimum standards on the rights, support and

protection of victims of crime¹. It is intended that the additional expenditure anticipated under the Bill will be offset by savings made through streamlining current processes.

50. The following financial estimates have been based on this new process. It should also be stressed that it has not been possible to develop any definitive costs, and what has been prepared for this memorandum is an estimate of costs based on what COPFS consider to be reasonable assumptions.

Number of additional notices

51. In order to provide an estimate of the cost of increased use of special measures, it was necessary to establish how many additional notices there would be in any one year. It is likely that there will be a degree of duplication within these figures – for example, a child witness may also be a victim of a sexual offence.

52. There may also be an additional number of applications for special measures from those not automatically classed as vulnerable, or for measures which are not automatically available to those who are (as the Bill will require individual assessments of all witnesses to ascertain if they require special measures). However, there is no data on which to base an estimate of any increase, and so this has not been included. Furthermore, the likely overestimate in relation to additional numbers of notices is likely to more than cover any potential costs from an increase in applications.

53. In relation to Child Witness Notices, COPFS confirms that the average number of 16 and 17 year olds cited over a three year period are as set out in table 3.

Table 3 -witnesses aged 16/17

| Type of Case | Number of 16 and 17 year old witnesses |
|---------------------|---|
| Summary | 5,233 |
| Sheriff and Jury | 689 |
| High Court | 149 |
| TOTAL | 6071 |

54. In relation to victims of sexual offences, figures on the number of people proceeded against for crimes of indecency are available from *Criminal Proceeding in Scotland 2011-12*² (supplemented by additional analysis for earlier years). These figures record a person each time there is a proceeding where the main charge is a crime of indecency. The annual average number over the 3 years 2009-10 to 2011-12 is 970. Based on current available experience and data, it has been assumed that one vulnerable witness is associated with each of those people proceeded

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:01:EN:HTML>

² <http://www.scotland.gov.uk/Publications/2012/11/5336>

against, and that 34% of accused plead guilty at the earliest opportunity³, therefore removing the need for any vulnerable witness notice. The figures obtained are set out in table 4.

Table 4 - vulnerable witnesses in cases involving sexual offences

| Number of people proceeded against in court for crimes of indecency (3-year average) | Number of vulnerable witnesses (based on assumptions in paragraph 54) |
|---|--|
| 970 | 640 |

55. In relation to victims of domestic offences, figures on the number of domestic abuse incidents are available from *Domestic Abuse Recorded by the Police in Scotland, 2010-11 and 2011-12*⁴. The annual average number of incidents reported over the 3 years 2009-10 to 2011-12 is 23,273. It has been assumed that proceedings are commenced in 75% of the number of reported incidences, based on estimates from COPFS. As above, it has also been assumed that 34% of accused plead guilty at the earliest opportunity. These figures are set out in table 5.

Table 5 - vulnerable witnesses in cases involving domestic abuse

| Number of incidents reported to Procurator Fiscal (3-year average) | Number of charges prosecuted | Number of cases for trial/ number of vulnerable witnesses |
|---|-------------------------------------|--|
| 23,273 | 17,455 | 11,520 |

56. For stalking cases, information from the COPFS system shows how many stalking charges have been prosecuted in a year. In addition, COPFS estimate that there are currently around 10 human trafficking charges prosecuted per year. For both stalking and human trafficking cases, it has been assumed that each case has only one charge. It has also been assumed that 34% of cases accused guilty at the earliest opportunity. The figures obtained are set out in table 6.

Table 6 - vulnerable witnesses in cases involving stalking or human trafficking

| Number of Charges/Cases | Number of cases for trial/ Number of vulnerable witnesses |
|--------------------------------|--|
| 313 | 207 |

³ This figure of 34% is taken from the 2011/12 Summary Justice Report (<http://www.scotland.gov.uk/Resource/0039/00394941.pdf>). While only applying to cases under summary proceedings, no data is currently available on which to base an estimate for solemn proceedings. For the purposes of the financial memorandum, therefore, this figure has been used for all cases.

⁴ <http://www.scotland.gov.uk/Publications/2012/10/9283>

57. On the basis of the figures above, the estimate of the number of additional vulnerable witnesses is 18,438. As will be noted, with the exception of child witnesses, it has not been possible to distinguish between cases prosecuted at summary and solemn level.

Cost of individual notices

58. On the basis of a streamlined procedure, as described in paragraphs 48 to 49, the following costs have been estimated for each type of vulnerable witness notice. This varies between straightforward cases (where vulnerability is easily identified and the victim does not require any COPFS assistance) and less straightforward cases (where the victim has a particular vulnerability or wishes the use of a special measure which is not automatically available).

59. The estimated cost for a standard notice (where there is an automatic entitlement to a special measure) is **£4.57**.

60. The estimated cost for a non-standard application is **£40.23**.

Total cost of application process

61. Based on the figures above, it is estimated that there will be 18,438 additional notices/applications per year. It has been assumed that the vast majority of these will be standard applications, following the straightforward application process. This figure has been estimated at 90% of cases.

62. That gives the following figures:

- Cost of standard notices (18,438 x 90% x £4.57) - **£75,800 per year**
- Cost of non-standard applications (18,438 x 10% x £40.23) - **£74,200 per year**

63. So, the total additional cost of the application process will be **£150,000 per year**.

Vulnerable witnesses and special measures - costs relating to use of special measures

64. As the use of special measures increases, there will be increased use of supporters, which will have a cost implication for COPFS (the cost of other special measures primarily affects SCS). The majority of supporters will be from the Witness Service, but some may be personally requested by the witness. The expenses of these supporters are met by COPFS. In estimating the cost of additional supporters, it has been assumed that the percentage of applications for personal supporters out of the total number of current applications for special measures will be the same under the new provisions (3.6%). It has been estimated that these supporters are paid an average amount of £15 each.

65. The cost of additional supporters is therefore likely to be approximately **£10,000 per year** (18,438 additional notices x 3.6% x £15).

Vulnerable witnesses and special measures – costs relating to challenges

66. There is no estimate given for the cost of challenges to notifications/application for special measures. COPFS consider that the cost of preparing and carrying out debates in relation

to the challenge will be absorbed by other case preparation costs. In addition, COPFS anticipate that, as the vast majority of these notifications relate to a witness's automatic right to special measures, there should not be a large number of challenges.

Vulnerable witnesses and special measures – other costs (referrals to Victim Information and Advice)

67. As the definition of child witness will now include 16 and 17 year olds, this will increase the number of referrals to COPFS's Victim Information and Advice (VIA) service. This number relates to the total number of 16 and 17 year olds who are cited by COPFS in a year and does not take account of victims in cases where the accused pleads guilty at the earliest opportunity. VIA will still have an involvement with the witnesses in these cases.

68. The numbers involved are:

- 16 & 17 year olds (Summary) = 5,233
- 16 & 17 year olds (Sheriff and Jury) = 689
- 16 & 17 year olds (High Court) = 149

69. An individual cost has been identified for each type of referral, as follows:

- Summary: £18.27
- Sheriff and Jury: £21.77
- High Court: £32.65

70. This means that the total cost of additional referrals is:

$(5233 \times £18.27) + (689 \times £21.77) + (149 \times £32.65) = \mathbf{£115,500 \text{ per year}}$

Victim Notification Scheme

71. The VNS is to be extended to include all offences where the accused is sentenced to over 12 months imprisonment. Although the scheme is operated by the SPS, there will be additional costs to COPFS in the initial administration, in terms of notifying victims that they may apply for the scheme. As set out in more detail at paragraph 112, part of this cost is not directly related to the provisions in the Bill. However, as the constituent parts of this proposal cannot easily be disaggregated, the total cost is used here.

72. The total estimated cost of one notification is £16.33.

73. SPS estimate that an additional 3,000 victims per year will be entitled to register for the scheme. At most, therefore (if all newly eligible victims opted in to the VNS) the additional cost to COPFS would be **£49,000 per year**. There are no accurate figures available for the current opt-in rate, but SPS consider that this is likely to be slightly lower than 50%. Assuming an opt in rate of between 50% and 100% (to account for a likely increase in the awareness of the VNS in light of the passage of the Bill), costs to COPFS will therefore be between **£24,500 and £49,000 per year**.

COPFS – total costs

74. Taking all of the above in to consideration, the total estimated financial impact of the Bill on COPFS is set out in table 7.

Table 7 - total costs on COPFS

| Proposal | Cost per year (£) |
|--|--------------------------|
| Vulnerable witnesses and special measures – costs relating to applications/notices | 150,000 |
| Vulnerable witnesses and special measures – costs relating to use of special measures (supporters) | 10,000 |
| Vulnerable witnesses and special measures – other costs (referrals to VIA) | 115,500 |
| Victim Notification Scheme | 24,500 – 49,000 |
| Total Cost to COPFS | 300,000 – 324,500 |

Measures with no or marginal costs

General principles

75. While COPFS will be required to have regard to the general principles when carrying out its functions (in so far as these relate to victims and witnesses), this is not expected to have any financial impact.

Standards of service

76. The obligation on certain justice organisations to publish standards of service for victims and witnesses will have minimal cost implications for COPFS, which already has similar standards and an established complaints procedure.

Access to case specific information

77. As with the police, COPFS currently deals with requests for case specific information, and is often the initial point of contact for victims and witnesses. While COPFS anticipates that there will be an initial increase in requests for information due to increased awareness of the reforms in the Bill and the EU Directive, it considers that this can be dealt with within current resources.

SCOTTISH COURT SERVICE

78. Costs on SCS will arise primarily from the proposals around vulnerable witnesses and special measures, and the introduction of the victim surcharge and restitution orders.

79. Total non-recurring costs are expected to be **£92,800**, with recurring costs of between **£369,000 and £502,500 per annum**.

Measures with cost implications

Vulnerable witnesses and special measures - overview

80. The changes in the Bill will result in increased numbers of witnesses automatically entitled to the use of special measures, and potential increases in the numbers applying for the use of such measures. This will increase costs in relation to the processing of applications and notices which must be submitted to the court, and the actual use of special measures. In addition, the Bill will introduce the ability for either party to object to an application or notice for special measures, which will require additional court time.

Vulnerable witnesses and special measures - costs relating to notices/applications

81. The Bill will increase the number of witnesses automatically entitled to use special measures, by including 16 to 17 year olds and victims of domestic abuse, sexual offences, stalking and human trafficking. The estimates provided by COPFS, which are replicated in the list below, have been used for the purposes of calculating costs on SCS.

- 16 and 17 year olds – 6,071 per annum
- domestic abuse – 11,520
- sexual offences - 640
- stalking and human trafficking - 207

82. At present, while witnesses falling into these categories are not automatically deemed to be vulnerable and so entitled to use special measures, they may be able to do so on application to the court. In addition, there will be some overlap between the categories described above. However, the numbers involved are considered to be fairly low, and so have not been taken into account.

83. Therefore, as in the COPFS estimates, it is assumed that the changes to special measures will result in an additional 18,438 notices/applications. It is expected that the vast majority of these would be lodged in the sheriff court.

84. SCS estimates that each notice will cost £11.32 to process in the sheriff court (it would cost around £14.45 in the High Court, but such notices are expected to constitute a very small percentage of the total). On this basis, it is estimated that the total cost of processing 18,438 additional notices would be around **£208,700 per year**.

85. There are also likely to be some additional applications for non-standard measures due to the wider definition of vulnerability (primarily to include individuals who, following an individual assessment, are considered to be at significant risk of harm as a result of giving evidence) but there is insufficient information available upon which to base any reasonable estimate, and any impact is expected to be small.

Vulnerable witnesses and special measures - Costs relating to the use of special measures

86. Any additional costs relating to the use of special measures depend crucially on the extent to which automatic entitlement is taken up, what sort of special measures are used, and whether

use of special measures which must be applied for (as opposed to being automatically available) also increases. All of these factors are unknown at present. In addition, it is not known whether the increased availability of both standard and special measures will have an impact (and if so, to what extent) on the trend of cases proceeding to evidence, which is currently around 10%. Costs are therefore difficult to predict with any accuracy. However, some estimates are provided below.

87. The automatic entitlement mentioned above will only apply to three special measures: use of a screen (to prevent the witness seeing the accused within the courtroom); the use of a live television link from within or outwith the court building; and the use of a supporter (to accompany the witness when giving evidence). Of these, an increase in the use of screens or live television links would have a cost implication for SCS.

88. The potential increase in demand for live television links within court buildings will likely require the purchase of additional equipment for the two largest courts, in Edinburgh and Glasgow. This will enable relevant cases to be allocated to additional courtrooms, which are currently not suitably equipped. Costs are estimated at **£60,000**, on the basis of providing a new witness room and additional courtroom equipment in both Edinburgh and Glasgow (costing £30,000 each).

89. The demand for use of live television links from remote sites (i.e. not from within the court building) is likely to increase as a result of the wider definition of "vulnerability". There is currently a dedicated site in each sheriffdom and these are supplemented by ad hoc sites across the SCS estate. On the basis of available information this is expected to be sufficient to meet any increased demand resulting from the Bill. SCS estimates that it will require one additional member of staff, costing **£24,000** p.a., to provide IT support for any additional demand.

90. To cope with additional demands for screen equipment, SCS considers that it will be necessary to provide one additional set of screen equipment for courts which deal with higher volumes of business; and two each for Glasgow and Edinburgh. A total of 19 sets will be required at £570 each, costing around **£10,800**.

91. It is unclear whether or not the use of other special measures (which will not be available automatically to the groups mentioned above) may increase as a result of the Bill. However, the special measure considered most likely to be used more frequently, and with the largest cost implication, is evidence by commissioner (a way of giving evidence in advance, outwith the courtroom). Table 8 reflects the potential impact on staff and judicial costs at hearings, presuming the sheriff or judge acts as the commissioner (at approximately £212 per hour).

Table 8 – potential cost of increase in use of evidence by commissioner

| Increased take up – hearings per annum | Hearing – one hour duration (£) | Hearing – two hour duration (£)* | Hearing – four hour duration (£)* |
|--|---------------------------------|----------------------------------|-----------------------------------|
| 25 | 5,300 p.a.* | 10,600 p.a. | 21,200 p.a. |
| 50 | 10,600 p.a. | 21,200 p.a. | 42,400 p.a. |
| 100 | 21,200 p.a. | 42,400 p.a. | 84,800 p.a. |

* where the commissioner is a high court judge this start point figure would be £7,000 p.a.

92. The total non-recurring cost relating to vulnerable witnesses using special measures is therefore **£70,800**, with recurring costs of between **£29,300 and £108,800 per year** (this includes the cost of one member of staff referred to in paragraph 89 (£24,000) and the minimum and maximum costs from table 8).

Vulnerable witnesses and special measures - costs relating to challenges to use of special measures

93. Finally, the new provisions will afford parties an opportunity to challenge a notice or application for special measures (standard or otherwise). The ability to challenge was previously fairly limited. In such instances the matter should be heard at a forthcoming diet e.g. an intermediate diet or a specific hearing should be fixed for this purpose.

94. It is difficult to estimate the likely number of challenges, but it is considered that this may be between 2.5% and 5% of all notices or applications for special measures.

95. Currently, around 7,000 applications and notices are lodged annually. As above, it is estimated that the automatic entitlement of certain groups to special measures will result in an additional 18,438 notices per year, giving a total of 25,438 notices/applications. However, the number of notices/applications requesting special measures will likely be considerably lower than this, as not all of the 18,438 newly eligible witnesses will wish to use them. This is not the case in relation to the processing costs mentioned above, as a notice has to be dealt with by the court even where the witness in question does not want to use special measures.

96. The additional cost of a single hearing to determine a challenge is estimated to be £55, based on this taking 15 minutes of court time. Table 9 sets out the potential cost to SCS of dealing with challenges on 2.5% and 5% of applications/notices, for a range of between 25% and 100% of newly eligible witnesses (i.e. of the 18,438) actually choosing to use special measures.

Table 9 - cost of challenges to special measures

| Uptake of special measures by newly eligible witnesses (%) | Total number of applications/notices requesting special measures* | Cost of challenges to 2.5% of cases (£55 per challenge) (£) | Cost of challenges to 5% of cases (£55 per challenge) (£) |
|---|--|--|--|
| 25 | 11,610 | 16,000 | 31,900 |
| 50 | 16,219 | 22,300 | 44,600 |
| 100 | 25,438 | 35,000 | 70,000 |

* Comprising the percentage of the 18,438 newly eligible witnesses in column 1, plus the current 7000.

97. The total cost of challenges is therefore between **£16,000 and £70,000 per year**.

Victim surcharge and restitution orders

98. The victim surcharge will be imposed on certain offenders by the court, and revenue will be collected by SCS (as court fines are currently). Similarly, the court will be able to impose a restitution order on those convicted of assaulting a police officer or police staff, which again will be collected by SCS. Once collected, these funds will be passed to the Scottish Government.

99. SCS has estimated the IT costs involved in setting up the victim surcharge and restitution orders at approximated **£22,000**. The amount is provided as an estimate at this stage and will require to be revised once more detail about both funds is known (this is to be set out in subordinate legislation). Consideration will also need to be given to the management information data required, which may result in additional costs.

100. The court costs for handling the victim surcharge are calculated on the basis that it will take an extra minute per case in court and administrative time to process. It is not anticipated that restitution orders will require additional court time, as these can be used as an alternative to a fine. The total estimated cost is **£115,000** per annum.

101. The total non-recurring cost of the victim surcharge and restitution orders is therefore estimated to be **£22,000**, with recurring annual costs of **£115,000**.

Scottish Court Service – total costs

102. The likely total costs on SCS are set out in table 10.

Table 10 – Total costs on SCS

| Proposal | Recurring costs per annum (£) | | Non-recurring costs (in year 2014/15) | |
|--|-------------------------------|----------------|---------------------------------------|-----|
| | Min | Max | Min | Max |
| Special measures – processing notices | 208,700 | 208,700 | n/a | n/a |
| Special measures – use of special measures | 29,300 | 108,800 | 70,800 | n/a |
| Special measures – challenges | 16,000 | 70,000 | n/a | n/a |
| Victim surcharge and restitution orders | 115,000 | 115,000 | 22,000 | n/a |
| TOTAL | 369,000 | 502,500 | 92,800 | n/a |

Measures with no or marginal costs

General principles

103. The cost of observing the general principles for SCS will be minimal.

Standards of service

104. There will be minimal costs associated with revising guidance and leaflets for victims and witnesses. These are not likely to be significant and will be absorbed by SCS.

Access to case specific information

105. As with the police and COPFS, SCS already deal with enquiries from victims and witnesses about cases affecting them. If the number of enquiries were to rise as a result of the Bill, this would increase the costs involved. However, it is not currently possible to quantify these potential costs, as it is not known what the level of enquiries will be, the level of staff required to deal with these, or how many requests are currently being made for this information. Costs will be considered as part of wider work with agencies to better facilitate access to case specific information for the victims of crime.

Victim statements – increased flexibility in timing of submission

106. SCS consider that this proposal will be cost neutral. There may be cases where an additional hearing will be required if the statement is lodged and issue is taken when sentence is about to be passed but such cases are likely to be minimal.

Court to consider compensation orders

107. The policy intention is to simply formalise that the court should give consideration to awarding compensation. This will not take up any notable amount of court time and as such there are no cost implications for SCS.

Removal of presumption that child witnesses under 12 will give evidence away from court

108. This is a very minor amendment to existing legislation, and is not expected to have an effect on many cases. No cost implications are anticipated.

Victim statements – extend eligibility

109. This is another minor amendment to existing legislation, to ensure that victim statements can be made on behalf of those under the age of 14. No costs implications are anticipated.

SCOTTISH PRISON SERVICE

110. Costs on SPS will result from the extension to the VNS. Non-recurring costs are estimated to be around **£31,000**, and recurring costs are estimated to be between around **£112,000 and £146,300 per annum**.

Measures with cost implications

Extension of Victim Notification Scheme and written representations about temporary release

111. The Scottish Government intends to extend the existing VNS, which enables victims of certain crimes to be notified of the release of offenders (and given various other information) who are sentenced to 18 months or more in prison⁵. This threshold will be lowered from 18 to 12 months, and applicability further widened to include victims of all crimes, not just those specified at present. This will result in an increase in the number of victims who are eligible to use the VNS, with an additional administrative cost on SPS depending on how many newly eligible victims utilise the scheme.

112. However, although the extension of the VNS to encompass victims of all crimes will be provided for in the Bill, the lowering of the threshold from 18 to 12 months will be carried out through existing order-making powers in the Criminal Justice (Scotland) Act 2003. While the Financial Memorandum is focussed on those costs arising directly from the Bill, this is a single proposal with two elements to it, neither of which is intended to stand alone. In addition, while the cost implications can be calculated for the proposal as a whole, it is difficult to disaggregate the constituent parts. For that reason, the cost estimate below encompasses both parts of this proposal.

113. The Bill will also allow victims to make written representations when a prisoner is first eligible for temporary release. Again, this will have an administrative cost on SPS, and this has been incorporated into the cost estimates below.

114. SPS estimates that the extension to VNS will result in an additional 3,000 eligible victims per year. The potential additional costs to SPS are shown in tables 11 and 12. Table 12 assumes that 100% of the newly eligible victims register for the VNS, while table 13 assumes that 50% register (the current uptake rate is estimated at slightly less than 50%). These cost estimates also incorporate the increase in costs expected from the ability to make representations about temporary release.

Table 11 – 100% of victims register (an additional 3,000 per year)

| | Year 1 costs (£) | Year 2 costs (£) | Year 3 costs (£) |
|---|-------------------------|-------------------------|-------------------------|
| Set up (IT development costs, furniture etc.) | 31,000 | - | - |
| Staffing (1 legal services manager and 2 legal services officers) | 93,600 | 98,200 | 103,100 |
| Administration (courier services for letters, stationery etc.) | 43,200 | 43,200 | 43,200 |
| TOTAL | 167,800 | 141,400 | 146,300 |

⁵ Further information and guidance on the VNS is available at:
<http://www.scotland.gov.uk/Publications/2004/11/20186/45919>.

Table 12 – 50% of victims register (an additional 1,500 per year)

| | Year 1 costs (£) | Year 2 costs (£) | Year 3 costs (£) |
|---|-------------------------|-------------------------|-------------------------|
| Set up (IT development costs, furniture etc.) | 30,600 | - | - |
| Staffing (50% of 1 legal services manager and 2 legal services officers) | 75,000 | 78,700 | 82,600 |
| Administration (courier services for letters, stationery etc.) | 29,400 | 29,400 | 29,400 |
| TOTAL | 135,000 | 108,100 | 112,000 |

Measures with no or marginal costs

General principles

115. The cost of observing the general principles for SPS will be minimal.

Standards of service

116. There may be some costs associated with revising guidance for victims and witnesses. These are expected to be marginal.

COSTS ON LOCAL AUTHORITIES

117. The establishment of a duty to have regard to guidance on Joint Investigative Interviews (JIIs) will apply to social workers. However, as this guidance already exists and is used by those carrying out such interviews, no financial impact is expected.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

118. The Bill will have cost implications on PBS, the legal aid fund (administered by SLAB), SCRA, and SPA. Details of these costs are set out below.

PAROLE BOARD FOR SCOTLAND (PBS)

119. PBS will incur costs primarily from the introduction of the ability to make oral representations. Recurring costs of between **£23,400 and £87,200 per year** are expected.

Measures with cost implications

Oral representations to the Parole Board for Scotland

120. Oral representations to PBS are being introduced to assist those victims who would prefer to make their views known orally rather than by submitting written representations. The cost of meeting with victims to receive these oral representations, and of then producing a written record of these to be presented to the tribunal will fall on PBS. The ability to make oral representations will only be available in connection with offenders given life sentences in the first instance (with the option to extend this to other categories by subordinate legislation).

121. Costs have been calculated based on the number of life sentence prisoners (approximately 220) referred to the Board each year. This number obviously fluctuates over time, but is considered to be the best available basis for estimating costs.

122. The uptake of the new ability to make oral representations is difficult to estimate, and so a range has been calculated to show the costs of 25%, 50% and 100% of eligible victims choosing to make such representations.

123. Potential costs are set out in table 13.

Table 13 - costs on PBS

| PBS COSTS | 100% take up – 220 cases £ | 50% take up – 110 cases £ | 25% take up – 55 cases £ |
|--|---|--|---|
| PB members costs @ £255 (including fees and travel) | 56,100 | 28,100 | 14,000 |
| Late cancellation fee for PB member (assuming this occurs in 10% of cases) @ £97.50 | 2,100 | 1,100 | 500 |
| Training PB members based on 10 members @ a daily fee of £195 | 2,000 | 2,000 | 2,000 |
| Overnight accommodation based on 25% of cases @ £100 per night | 5,500 | 2,800 | 1,400 |
| Victim + supporter travel and expenses @ £10 | 2,200 | 1,100 | 600 |
| Room hire @ £25 | 5,500 | 2,800 | 1,400 |
| PBS administration @ £62 | 13,600 | 6,800 | 3,400 |
| Administrative cancellation costs (assuming 10% of cases) @ £9 | 200 | 100 | 100 |
| TOTALS | 87,200 | 44,800 | 23,400 |

Measures with no or marginal costs

General principles

124. The cost of observing the general principles for PBS is expected to be minimal.

Standards of service

125. PBS does not anticipate any cost implications arising from the duty to set out standards of service.

LEGAL AID FUND

126. The changes being made in relation to vulnerable witnesses and special measures will have a cost implication on the Legal Aid Fund (which is administered by SLAB), estimated at between **£6,000 and £26,700 per year**.

Measures with cost implications

Vulnerable witnesses and special measures – introduction of ability to challenge

127. Costs on the Legal Aid Fund will arise from the introduction of an ability for either party in a case to challenge an application or notice for special measures (as such a challenge will require the involvement of a defence solicitor).

128. It is difficult to calculate an accurate estimate of costs on the Legal Aid Fund, as there is uncertainty over the total number of applications or notices per year; the percentage of these which are likely to be challenged; and the number of cases where the defence will be funded by legal aid. Crucially, it is also unclear how many cases involving challenges to special measures will be conducted under summary and solemn proceedings. The former should involve no additional costs, as these would be covered by the core fixed payment to the solicitor in question. However, under solemn proceedings, there would be additional costs.

129. For solemn proceedings, SLAB estimates that a single challenge would cost £205.20 (comprised of a £152 standard fee plus an estimated £19 court hearing fee for a 15 minute hearing, plus VAT). In addition, SLAB estimates that 15% of cases under solemn proceedings involve counsel, which would cost an additional £378 per challenge (resulting in cases utilising counsel costing £583.20 in total). These figures can be consolidated to give an average cost per case in solemn proceedings of **£261.90** (which covers an additional £378 counsel fees in 15% of cases; i.e. £205.20 + £56.70).

130. Based on data from the past 3 years⁶, solemn proceedings are used in just over 7% of cases held in the sheriff or high court. It is possible that the proportion of solemn cases for the subset of cases involving special measures may differ from this. However, there is currently no data on which to base an alternative proportion (and, in any case, it is considered unlikely that this would be significantly different from the average across all cases). For the current purposes, therefore, this average figure has been used, rounded up to 8%.

⁶ <http://www.scotland.gov.uk/Publications/2012/11/5336/7>

131. The total number of applications/notices for special measures per year is estimated to be between 11,610 and 25,438 (as explained in the SCS section in paragraphs 95 to 96). Using the percentage above, it is therefore likely that between 929 and 2,035 of these will relate to solemn proceedings.

132. As in the SCS estimates, costs have been calculated for 2.5% and 5% of relevant special measures applications/notices being challenged.

Table 14 – Potential costs to Legal Aid Fund

| | Minimum cost (£) (929 applications/notices relating to solemn proceedings) | Maximum cost (£) (2,035 applications/notices relating to solemn proceedings) |
|--|--|--|
| 2.5% of cases challenged (at £261.90 per case) | £6,000 (23 x 261.90) | £13,400 (51 x 261.90) |
| 5% of cases challenged (at 261.90 per case) | £12,000 (46 x 261.90) | £26,700 (102 x 261.90) |

SCOTTISH CHILDREN’S REPORTER ADMINISTRATION (SCRA)

133. SCRA will incur some minor costs from the change in the definition of child witness to include 16 and 17 year olds (which is part of the package of changes being made around special measures and vulnerable witnesses).

Measures with no or minimal cost implications

Special measures – change to definition of child witness

134. The potential increase in costs for SCRA is a result of 16 and 17 year olds being included in the definition of child witness, and so being automatically entitled to special measures. This may affect cases which are referred from the children’s hearing system to the sheriff court in which SCRA calls such individuals as witnesses. Costs would result from completing the necessary paperwork, and from communicating with the individual witnesses to obtain their views about what special measures are required.

135. While there is very limited data available, an estimate of the minor costs involved is given below.

136. In 2011-12 there were 3,795 proofs concluded. In 376 of these evidence was led by the Reporter. An anecdotal survey of SCRA's Senior Practitioners (who have specific responsibilities in relation to court work) suggests that calling a 16 to 17 year old as a witness in a proof is very rare and may only occur in a maximum of 5% of cases where evidence is led (please note that this is a very rough maximum estimate). That would give a theoretical potential maximum of around nineteen 16 to 17 year old witnesses in a year.

137. SCRA estimates that the time to cite a child witness would average out at around 3 hours of additional work (though this can vary considerably on a case-by-case basis). Based on an average Reporter cost of £20 per hour, SCRA estimate a cost of £60 per application.

138. It is therefore estimated that the maximum possible cost of the provision is around **£1,100 per year** (5% of 376 at £60, rounded to nearest £100).

SCOTTISH POLICE AUTHORITY

139. The SPA will be affected by a number of measures in the Bill, set out below. However, these are all expected to have no or marginal costs.

Measures with no or marginal costs

General principles

140. While the police will be required to have regard to the general principles when carrying out their functions (in so far as these relate to victims and witnesses), this is not expected to have any financial impact.

Standards of service

141. The costs of developing and making available clear standards of service for victims and witnesses are expected to be marginal, and the police already have a comprehensive complaints process.

Access to case specific information

142. The police already deal with enquiries from victims and witnesses about cases affecting them. If the number of enquiries were to rise significantly as a result of the Bill, this could increase the costs involved (for example, if handling these took up a larger proportion of staff time, or there was a need to establish dedicated contact points). However, there is no available data on which to predict the likelihood or volume of such a rise in enquiries, nor of the current cost of responding to these, and so no meaningful estimate can be given at present. Costs will be considered as part of wider work with agencies, including the police, to better facilitate access to case specific information for victims of crime.

Vulnerable witnesses and special measures

143. Changes to the availability of special measures for vulnerable witnesses will primarily affect SCS and COPFS. However, it is possible that there could be some minor indirect costs on the police resulting from these changes. For example, the changes are likely to result in an

increased use of screens in court (to allow the witness to give evidence without seeing the accused). If so, this could potentially result in an increase in the number of identity parades required in order to allow witnesses to identify the accused, since that cannot be done from behind a screen.

144. Given the uncertainties around this, it is very difficult to anticipate the extent to which additional parades could be required, if at all. However, this is not expected to require significant additional resource.

Right for victims of sexual violence to choose gender of interviewer

145. The police will be required to ensure that interviewers of both genders are available in cases involving sexual violence. However, it is expected that this can be achieved without any additional costs.

Duty to have regard to guidance on Joint Investigative Interviews

146. The duty to have regard to guidance on JIIs will apply to the police. However, as this guidance already exists and is used by those carrying out such interviews, no additional costs are expected.

INDIVIDUALS AND BUSINESSES

147. There may be some cost to individuals calling vulnerable witnesses in civil cases, as a result of the change in the definition of child witness to include 16 and 17 year olds. However, the Scottish Government does not expect there to be many civil cases involving this age group. There are a large number of family cases in the courts and many of these relate to issues such as child contact and residence. However, these cases relate to children under the age of 16 and that is not being changed by this Bill. As a result, any additional costs on individuals are expected to be minimal.

ADDITIONAL INCOME

148. The introduction of the victim surcharge and restitution orders will generate additional income from offenders, which will be used for the benefit of victims.

Victim surcharge

149. The Bill provides that a victim surcharge will be payable by such offenders as are identified by the Scottish Ministers by order, and that further detail on the amount of the surcharge will also be set out by subordinate legislation. As a result, it is impossible at this stage to give an accurate estimate of the likely income from the surcharge. However, although no decisions have been taken as yet, the Scottish Government has developed a model which may be used.

150. Under this model, the victim surcharge would initially be imposed on all offenders who are subject to court fines (with the potential to expand this at a later date). The amount of the surcharge would be linked to the amount of the fine, by way of a scale set out in secondary

legislation. The levels on this scale would be set by reference to the standard scale of fines, as shown in table 15.

Table 15 – possible model for setting surcharge amount

| Court fine between (£) | Surcharge (£) |
|-------------------------------|----------------------|
| 0.01 - 200 | 20 |
| 200.01 - 500 | 30 |
| 500.01 - 1000 | 40 |
| 1000.01 - 2500 | 50 |
| 2500.01 - 5000 | 100 |
| 5000.01 - 10,000 | 200 |
| Over 10,000 | 10% of fine |

151. For illustrative purposes only, this model is used in table 16 to set out the potential income which may be generated by the victim surcharge. Calculations are based on data from SCS on the number and value of fines imposed over the last 3 years (2009/10 – 2011/12).

Table 16 – Potential income from victim surcharge

| Fines between (£): | Average number of fines imposed p.a. | Level of victim surcharge (£) | Income - 100% collection rate (£) | Income – 80% collection rate (£) | Income - 60% collection rate (£) |
|----------------------------|---|--------------------------------------|--|---|---|
| 0 – 200 | 38,149 | 20 | 763,000 | 610,400 | 457,800 |
| 200.01 – 500 | 23,438 | 30 | 703,100 | 562,500 | 421,900 |
| 500.01 – 1,000 | 3,885 | 40 | 155,400 | 124,300 | 93,200 |
| 1000.01 – 2,500 | 535 | 50 | 26,800 | 21,400 | 16,000 |
| 2,500.01 – 5,000 | 107 | 100 | 10,700 | 8,600 | 6,400 |
| 5,000.01 – 10,000 | 54 | 200 | 10,800 | 8,600 | 6,500 |
| Over 10,000 | 89 (total value £4,854,610) | 10% of fine | 485,500 | 388,400 | 291,300 |
| Total per annum (£) | - | - | 2,155,300 | 1,724,200 | 1,293,100 |

152. It is acknowledged that once a fine or, in future, a surcharge is imposed by the court, there will in some cases be a time delay before full payment is received, either because of agreed phased payment arrangements or following enforcement action against defaulters. Information from SCS suggests that a reasonable estimated collection rate, based on previous years, is likely to be around 66% after one year, and around 90% after 3 years.

153. The cost of collecting the victim surcharge will fall on SCS, as set out earlier. However, there will also be some costs involved in administering the fund, which the Scottish Government intends to delegate to a third party. These costs would be met from the victim surcharge income, but are expected to be minimal.

Restitution orders

154. Unlike the victim surcharge, the court will decide whether or not to impose a restitution order in relevant cases, and will determine the amount. It is therefore difficult to estimate potential income. The current charge for assaulting the police resulted in the imposition of fines totalling £336,096 over the period 1 January 2010 - 28 February 2012, which is an average of approximately £155,000 per year. The new equivalent charge in the Police and Fire Reform (Scotland) Act 2012 may increase the potential income as it is worded to include a wider range of potential victims, although any difference is likely to be small.

155. However, given that this figure is subject to so many variables, such as the rate of commission of the crime in question, and sentencers' approach, there is no guarantee that it will remain stable and even less that it will be similar to that imposed through restitution orders. Furthermore, while the Bill's provisions prioritise a restitution order over a fine, the continued use of fines (which will still be an option for the court) could lower the potential income.

PART B – NATIONAL CONFIDENTIAL FORUM

156. This part of the Financial Memorandum summarises the cost implications of the National Confidential Forum (NCF) discharging the following functions:

- To receive and listen, in private and in confidence, to the experiences of adults who were placed in institutional care as children, including experiences of abuse;
- To contribute to the prevention of the abuse of children placed in institutional care in the future by making proposals to inform policy and practice, based on experiences recounted in hearings of the NCF;
- To make a contribution to the permanent record of life in care, enhancing public knowledge and understanding of an important part of Scotland's history;
- To signpost services to participants and their families which can offer support, advocacy, advice and information.

157. The analysis and estimates contained in this memorandum draw on a variety of sources including the Scottish Government consultation on the NCF; the costs associated with the precursor to the NCF, the Time to be Heard Pilot Forum⁷; and the experiences of other

⁷ Time to be Heard <http://www.scotland.gov.uk/Publications/2011/03/07122331/0>

jurisdictions. It should be read in conjunction with the Policy Memorandum, which sets out more fully the policy proposals which underpin the Bill and the range of non-financial benefits associated with the creation of the NCF.

158. One of the key policy areas in the Bill is the establishment of the NCF. The NCF will give people who were placed in institutional care as children the opportunity to recount their experiences of that care, in a confidential and non-judgemental setting, to an independent panel. These experiences will include, but not necessarily be confined to, abuse and neglect. The work of the NCF will both contribute to an improvement in the health and wellbeing of the people who participate in the NCF and inform the future development of law, policy and service provision to children. The creation of the NCF is central to the National Strategy for Adult Survivors of Childhood Abuse (the Scottish Government’s SurvivorScotland Strategy)⁸ which seeks to improve the health and wellbeing of all survivors of abuse in childhood.

159. The specific financial impact of the Bill provisions relating to the NCF is relatively narrow. There are, however, a range of costs associated with establishing and operating the NCF, including support for participants; staffing; and infrastructure costs.

SUMMARY OF COSTS ON THE SCOTTISH ADMINISTRATION

160. Table 17 summarises the projected Scottish Government investment for the setting up and operating of the NCF. Costs have been estimated on the basis of the Time to Be Heard Pilot Forum and through a consideration of the operational costs incurred by existing public bodies.

Table 17 - Projected costs

| National Confidential Forum – Projected Costs | Start-up costs (2013-14) £’000 | Annual Running Costs from 2014 - 15 £’000 |
|---|---|--|
| Head of Forum, members and staff * - including counselling support | 80 | 320 |
| Recruitment costs | 15 | |
| Operating costs** | 20 | 55 |
| Professional advice/project management | 70 | 70 |
| Website | 25 | 10 |
| IT/Telephones/ audio & video conferencing | 50 | 12 |
| Advertising | | 30 |
| Annual report | | 5 |
| Participant costs | | 288 |
| Professional support for participants | | 60 |
| Total | 260 | 850 |

* includes employer contributions

** includes travel & subsistence; premises; rates; utilities; postage; printing.

⁸ Survivor Scotland Strategy: <http://www.survivorscotland.org.uk/library/item/national-strategy-document-1/>

161. Table 18 below summarises the year-on-year costs to the Scottish Government and any others.

Table 18 - Costs over time

| | 2012/13 | 2013/14 | 2014 – 15+ |
|---|----------------|----------------|-------------------|
| Costs to the SG | £300,000 | £560,000 | £850,000 |
| Costs to local authorities, NHS Boards, third sector organisations or for relevant individuals | £0 | £0 | £0 |

BACKGROUND

The Bill

162. The Bill contains provision relating to the establishment and operation of the NCF. In particular, the Bill sets out the arrangements by which the NCF is to be hosted by an existing public body, specifically the Mental Welfare Commission (MWC), including the mechanisms to safeguard the respective operational autonomy of the NCF and the MWC.

Statistics

163. In order to estimate future demand for participation in the NCF, the Scottish Government funded the Centre for Excellence for Looked After Children in Scotland (CELCIS) to undertake a scoping project to look at patterns of abuse and neglect in care in Scotland between 1930 and 2005. Despite a lack of consistent, robust data over that period, the Report produced by CELCIS as a result of the scoping project concludes that 480,000 people were in care as children between 1930 and 2005 (including war time evacuees) and, of these, 320,000 are likely to be alive today⁹. This spans residential, foster care and community placements. While it is not possible to robustly disaggregate these figures, it is clear that the majority of children placed in care in Scotland over the period of the scoping project were not placed in institutional forms of care (the proposed scope of the NCF).

164. The experience of the Time to be Heard Pilot Forum has also informed estimates of expected demand to participate in the NCF. The total number of those who participated in the Pilot Forum (98) represented less than 1 per cent of the children who were in the care of Quarriers between 1878 and the mid 1980s¹⁰.

165. These figures would appear to suggest that the total number of people seeking to participate in the NCF will be similar to that in respect of the Commission in Ireland. The total number of people who came forward to participate in both the Confidential and Investigation

⁹ Scoping Project: <http://www.survivorscotland.org.uk/news-and-events/item/scoping-project-on-children-in-care-in-scotland-1930---2005/>

¹⁰ Quarriers history: <http://www.quarriers.org.uk/who-we-are/history/>

Committees in Ireland totalled 2,390. It should, however, be noted that the budget for the NCF is significantly less than that of the Irish Commission (which totalled 136 million Euros) principally because the NCF will not have investigatory or inquiry powers nor will it be empowered to offer financial compensation to survivors of abuse¹¹.

166. There are many factors which could support or inhibit the participation in the NCF of those placed in institutional care as children. It is not possible to predict with certainty exact numbers. However, based on the findings of the scoping project and the experiences of the Time to be Heard Pilot Forum and the Irish Commission, it is expected that up to 2,000 people will wish to take part in the NCF.

167. The Time to be Heard Pilot Forum incurred expenditure totalling £300,000 for 98 participants (not including the preparatory work done by the Scottish Government). The per capita cost of the Pilot was £3,000, based on the holding of 8 hearings per week. The NCF is expected to hold 10 hearings per week, with the total budget reflecting the costs associated with that increased frequency of hearings as compared with the Pilot Forum.

168. On the basis that 2000 people will wish to take part in the NCF, and the capacity of the NCF to hold 10 hearings a week, it is likely that expenditure associated with the delivery of the main function of the NCF (acknowledgement hearings) will be spread across several financial years, encompassing two spending review periods.

COSTS ON THE SCOTTISH ADMINISTRATION

169. In 2012/13, funding of £300,000 has been made available for the consultation and development of legislation to establish the NCF on a statutory footing. In 2013/14, funding will be available for the legislative process and further engagement with stakeholders of £300,000. These costs do not arise directly from the Bill but rather are costs associated with developing the legislative framework for the NCF, in consultation with stakeholders.

170. In 2013/14, there will be start-up costs associated with the establishment of the NCF of £260,000 (as outlined in Table 17). Annual recurring costs associated with the discharge by the NCF of its functions (of £850,000) will likely be incurred from 2014-15 onwards.

171. These costs will be met from the baseline budget provided for in the Scottish Spending Review 2011 to support the establishment and running of the NCF, with funding for future years to be prioritised at the next Scottish Spending Review.

Short-term, non-recurring costs

172. The start-up costs (as outlined in Table 17) are those associated with the establishment of the NCF and are estimated at £260,000 in 2013/14. These costs will fall on the Scottish Government. The NCF will be hosted by an existing public body, maximising the benefits of being part of an established body, while being supported to deliver distinct functions with a high level of operational independence.

¹¹ <http://www.childabusecommission.com/rpt/>

173. The start-up costs associated with the establishment of the NCF include the following budget heads:

- Recruitment costs;
- Legal costs;
- Media advice;
- Minor furnishings;
- Website;
- IT/Telephones;
- Audio/Video Conferencing;
- Advertising;
- Postage; and
- Stationery and Printing.

174. The estimates of start-up costs are based on the experience of establishing the Time to be Heard Pilot Forum which, while operating for a more limited period and with a more restricted scope, had similar start-up costs to those envisaged for the NCF. For example, the NCF will require to recruit staff; advertise its role and function; and have the necessary equipment and premises to organise, hold and record acknowledgement hearings.

Annual, recurring costs

175. The annual recurring costs associated with the operational management of the NCF are estimated at £850,000, as set out in table 18. These estimates are partly based on the experience of the Pilot Forum, with an increase to reflect the significantly higher number of acknowledgement hearings which will be held and the increased need for flexibility in organising those hearings to enable participation of a diverse group. There are also increased costs to reflect the expected higher level of staff support required to ensure the effective operation of the NCF.

176. The operational costs associated with the discharge by the NCF of its functions, include the cost of premises (likely to be within the MWC) as well as costs associated with holding acknowledgement hearings in flexible ways to encourage participation. These costs will also include access to a protected area of the MWC's existing IT system and a dedicated website for the NCF.

177. The annual recurring costs associated with the discharge by the NCF include the following budget heads:

- Employment/appointment of the NCF Head; at least two further members of the NCF; a Project Manager; and administrative support.
- Counselling support for staff;
- Travel and subsistence for the Chair, members and staff;

- Legal costs;
- Media advice;
- Project management;
- Furnished premises;
- Rates;
- Utilities;
- Website;
- IT/Telephones;
- Audio/video conferencing;
- Advertising;
- Postage;
- Stationery and printing;
- Annual Report;
- Participants' travel and subsistence; and
- Professional support for participants.

Assistance for participants

178. The budget for the NCF includes provision for the travel and subsistence costs incurred by participants in attending hearings of the NCF. This is set at a maximum limit of £300 per person, based on the Time To Be Heard Pilot Forum which incurred average costs of £300 per participant and the expectation that the NCF will hold 10 hearings a week for 48 weeks per annum. These participant costs will also include accommodation, where appropriate and in agreement with the NCF. The budget also makes provision for the costs associated with participants bringing another person to support them at NCF hearings. This is also set at a maximum limit of £300 per person.

COSTS ON LOCAL AUTHORITIES

179. There are no cost implications for local authorities associated with the establishment and running of the NCF.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

180. There are no cost implications for others parties associated with the establishment and running of the NCF, including NHS Boards, third sector organisations and relevant individuals. Specifically, any additional costs falling to the MWC as a result of hosting the NCF will be funded by the Scottish Government.

Other support for participants

181. In 2010, the Scottish Government provided funding for the creation of a new service, In Care Survivors Service Scotland (ICSSS), recognising the importance of a service specifically for adult survivors abused in care as children. This voluntary sector organisation provides dedicated services for adults who were abused in care as children, recognising their specific needs. The Scottish Government committed £750,000 of funding (until October 2011) and has recently committed a further £637,500 to ICSSS until 2015.

182. The costs associated with funding ICSSS do not arise directly from the Bill. The support provided to participants in the NCF by ICSSS will, however, provide added value to the range of supports funded under the budget made available to establish and run the NCF.

VICTIMS AND WITNESSES (SCOTLAND) BILL – SUMMARY OF ALL COSTS

183. Table 19 summarises all costs arising from the Bill as a whole.

Table 19 – Summary of all costs

| Body | Non-recurring costs (£) | Recurring costs – Min (£ per year) | Recurring costs - Max (£ per year) |
|--|--------------------------------|---|---|
| COPFS | - | 300,000 | 324,500 |
| SCS | 92,800 | 369,000 | 502,500 |
| SPS | 31,000 | 112,000 | 146,300 |
| PBS | - | 23,400 | 87,200 |
| SLAB | - | 6,000 | 26,700 |
| SCRA | | 1,100 | 1,100 |
| Scottish Government | 260,000 | 850,000 | 850,000 |
| SCOTTISH ADMINISTRATION TOTAL (COPFS, SCS, SPS and Scottish Government) | 383,800 | 1,631,000 | 1,823,300 |
| TOTAL | 383,800 | 1,661,500 | 1,938,300 |

**SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE
COMPETENCE**

184. On 6 February 2013, the Cabinet Secretary for Justice (Kenny MacAskill MSP) made the following statement:

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

**PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE
COMPETENCE**

185. On 6 February 2013, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

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

These documents relate to the Victims and Witnesses (Scotland) Bill (SP Bill 23) as introduced in the Scottish Parliament on 6 February 2013

VICTIMS AND WITNESSES (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

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