

# **MANAGEMENT OF OFFENDERS (SCOTLAND) BILL**

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## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Management of Offenders (Scotland) Bill, introduced in the Scottish Parliament on 22 February 2018.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 27-EN);
- a Policy Memorandum (SP Bill 27-PM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 27-LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

4. The Scottish Government is committed to reducing re-offending. The Management of Offenders Bill ("the Bill") takes forward three related but discrete sets of reforms which each contribute to that overarching goal. The substantive provisions of the Bill are in three parts: Part 1 expands the uses of electronic monitoring in order to increase the options available to manage and monitor offenders in the community, whilst further protecting public safety; Part 2 modernises and improves the Rehabilitation of Offenders Act 1974 ("the 1974 Act"), making the regime more transparent and easier to understand; and Part 3 makes some minor technical amendments to existing legislation, reinforces the independence of the Parole Board and provides for the administration arrangements of the Parole Board to be set out in secondary legislation. Part 4 of the Bill contains some standard ancillary and final matters.

### ***Part 1 of the Bill - sections 1-16 – ELECTRONIC MONITORING***

#### **COSTS ON THE SCOTTISH ADMINISTRATION**

5. It is anticipated that the provisions of the Bill will lead to an increase in the overall cost associated with electronic monitoring. These expected costs fall broadly into two categories: those associated with new or amended uses of monitoring; and those associated with the introduction of new monitoring technology.

#### ***Costs associated with new or amended uses of electronic monitoring***

6. The Scottish Government contracts with an external service provider for the delivery of the electronic monitoring (EM) service, the cost of which is met out of central budgets. This

contract is based on a fixed fee for the installation (and de-installation) of the equipment alongside a daily charge for each ‘tagging day’. The current contract started in 2013/14 and since then the average daily cost has been approximately £8 per monitored individual. Unless otherwise specified, for the purposes of calculating the estimated costs associated with new or amended uses of electronic monitoring, the Financial Memorandum uses the approved installation and daily rates applicable under the present contract.

7. Section 3 of the Bill provides a list of disposals in relation to which the court may also require an offender to submit to electronic monitoring. The list includes the following disposals:

- an order made under section 245A of the Criminal Procedure (Scotland) Act 1995 (relating to a Restriction of Liberty Order (RLO));
- an order made under section 234CA(1) of the Criminal Procedure (Scotland) Act 1995 (relating to a Drug Treatment and Testing Order (DTTO));
- an order made under section 227A(2)(j) of the Criminal Procedure (Scotland) Act 1995 (relating to a Community Payback Order (CPO)); and
- an order made under sections 104, 105 or 109 of the Sexual Offences Act 2003 (relating to a Sexual Offences Prevention Order or SOPO); or an order made under sections 11, 12 or 21 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (relating to a Sexual Harm Prevention Order (SHPO)).

8. Provisions already exist for the use of EM in relation to restricted movement requirements imposed as a condition of either an RLO or a DTTO. The Bill does not directly affect these disposals but there may however be an indirect impact on them, for example as a result of the heightened profile of electronic monitoring in general.

9. The anticipated impact on RLO use is discussed further below. In the case of DTTOs, this power is rarely used (for example, figures from the contract provider suggest that only three such disposals were made between 1 January and 31 December 2016). It is therefore anticipated that only marginal, if any, costs will fall on the Scottish Administration in relation to DTTOs.

10. Provision also already exists for the use of EM in relation to a restricted movement requirement imposed as part of a CPO. At present, however, a restricted movement requirement cannot be imposed at the point of initial sentence, but only following the breach of an order. Where the court is satisfied that a breach has occurred, it is empowered to vary the original order in a number of ways including the imposition of a restricted movement requirement. In practice, this power is rarely used, amounting to approximately 10 cases per year.

11. Under the present legislative regime, if the court wishes an individual to submit to electronic monitoring whilst subject to supervision under the provisions of a CPO, the court must also impose a concurrent RLO. Figures provided by the Scottish Courts and Tribunals Service suggest that there are approximately 1,000 such cases each year.

12. The Bill provides the court with the option of imposing a restricted movement requirement as part of a CPO at the point of initial sentence, removing the requirement to impose two separate orders. It is anticipated that this change will lead to an increase in the number of

people being given restricted movement requirements as part of a CPO, which will in turn lead to an increase in the costs associated with monitoring those orders.

13. It is further anticipated, however, that the power to impose a restricted movement requirement as part of a CPO will lead to a comparable reduction in the number of concurrent RLOs as these will no longer be necessary. The majority of costs associated with the increase in the use of electronic monitoring for CPOs is therefore anticipated to be offset by an associated decrease in the cost of monitoring RLOs.

14. It is not anticipated that the provisions of the Bill will lead to a large scale change in the manner in which electronic monitoring is used by the courts in relation to people made subject to CPOs. Sentencing in each case will continue to be determined on the facts and circumstances at hand, and it is anticipated that electronic monitoring will not be considered appropriate in the vast majority of cases in which a CPO is imposed.

15. As such, it is not anticipated that the provision will lead to a direct increase in costs. In common with any Bill which amends criminal justice disposals however, the exact financial impact will be dependent on how much use is made of this new power by the judiciary. It is therefore difficult to assess if the more streamlined process will result in a rise in electronic monitoring and subsequent cost increase. Based on the current use of CPOs it is, however, possible to provide indicative figures on the impact should such an increase in electronic monitoring in relation to CPOs occur.

16. In 2015/16 the average length of a CPO with a supervision requirement was 15½ months. The cost of monitoring one person for that period of time, based on the current contact price, is £2,910. As such, each additional 100 people made subject to electronic monitoring for that length of time (which would represent an uplift of around 10% on the previous use of concurrent CPOs) would equate to an additional cost of **£291,000**.

17. There is no current provision for the use of electronic monitoring in relation to a SOPO, and as such there will be an increase in the costs associated with this order. In order for an electronic monitoring requirement to be imposed as part of a SOPO, the court is required to be satisfied that such a condition would be necessary and proportionate to protect the public from serious sexual harm from the offender.

18. Figures provided by Police Scotland indicate that on average over the past three years approximately 70 SOPOs have been issued by Scottish courts. It is challenging to estimate with any degree of certainty how many orders might attract an electronic monitoring condition, but it is not anticipated that it will be considered appropriate except in a small number of instances (currently estimated by Police Scotland to equate to no more than 10% of all cases).

19. Using the current contract prices, monitoring one individual for a period of 12 months would cost £2,310. As such, monitoring for example seven individuals for a 12 month period (accounting for 10% of the current caseload) would equate to a cost of **£16,170**.

20. Section 5 of the Bill provides that Scottish Ministers, when imposing conditions in connection with the release of a prisoner, may additionally require them to submit to electronic monitoring. The relevant conditions are set out at section 7 of the Bill and include:

- where a curfew condition as provided for in section 12AA(1)(b) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) (relating to release on licence under section 3AA of that Act);
- conditions under section 12(1) of the 1993 Act (on release on licence under Part 1 of that Act where sentencing is on or after 1 October 1993);
- conditions under section 22(6) of the Prisoners (Scotland) Act 1989 (on release on licence regarding certain sentences where sentencing is before 1 October 1993); and
- conditions relating to temporary release in accordance with rules made under section 39 of the Prisons (Scotland) Act 1989 (known as prison rules).

21. There are already provisions that allow for the use of electronic monitoring in relation to release under section 3AA of the 1993 Act (known as home detention curfew, (HDC)) and in relation to release on licence under Part 1 of the 1993 Act or section 22(6) of the 1989 Act. Figures provided by the contract provider show that during the period 1 January to 31 December 2017 1,432 new HDC licences were imposed along with a further 35 parole releases with an electronic monitoring condition.

22. The Bill does not directly affect release under these various options, and the eligibility criteria for each type of licence remains the same. There may however be a small indirect impact on numbers, for example as a result of the heightened profile of electronic monitoring in general. It is, however, anticipated that only marginal costs, if any, will fall on the Scottish Administration in relation to monitoring imposed in these two circumstances.

23. There is no current provision for the use of EM in relation to temporary release under section 39 of the 1989 Act. It is therefore anticipated that there will be an increase in costs associated with this new use. In common with the other new or amended uses of monitoring, the precise cost impact of this change will be dependent on uptake.

24. In terms of the present prison rules (as defined by the Prisons and Young Offenders Institutions (Scotland) Rules 2011) temporary release falls into five categories:

- home leave for the purpose of enabling a prisoner to visit his or her home or other approved place (for a period not exceeding seven nights);
- unescorted day release for the purpose of preparing a prisoner for eventual release (for a period not exceeding one day);
- unescorted day release for compassionate reasons (for a period not exceeding one day);
- unescorted release for health reasons (for a period not exceeding seven day); and
- temporary release for work (for a period not exceeding one day).

25. It is not anticipated that electronic monitoring will be used in relation to any form of temporary release other than home leave. Figures from the Scottish Prison Service (SPS) indicate that over the past three years an average of 500 prisoners spent approximately 40 days each on home leave per year. The SPS anticipates that electronic monitoring will, however, not be appropriate in the typical majority of cases. Rather, the policy intention is that for those individuals who are on the margins of acceptable risk, electronic monitoring may provide an additional option to test an individual's readiness while maintaining public safety.

26. Again, the precise costs associated with these provisions will depend on how much use is eventually made of them by the SPS. Under the terms of the current contract, monitoring one individual for six periods of maximum allowed seven day home leave period (42 days in total) would cost £972, inclusive of six iterations of the installation/de-installation fee and 42 "tagging days". As such, every additional 50 prisoners (equating to 10% of the current annual caseload) made subject to electronic monitoring on this basis would equate to a cost of **£48,600**.

#### Costs associated with the introduction of new technologies

27. Section 8 of the Bill provides the Scottish Ministers with the power to prescribe in regulations approved devices for monitoring an individual's whereabouts or their consumption of alcohol, drugs or other substances.

28. It is anticipated that, in addition to devices which use the currently available Radio Frequency (RF) technology (which is presently used in relation to each of the existing electronic monitoring requirements and forms the basis of the estimated costs outlined above), the Scottish Ministers will also approve devices using Global Positioning System (GPS) technology.

29. The current contract with the service provider contains provision for the use of GPS technology. The costs for the provision of GPS monitoring are broken down into a fixed fee for the installation of the equipment alongside a multi-tiered daily charge for each "tagging day".

30. The cost of each 'tagging day' reduces as the total number of days monitored under the contract increases during the course of the year. This means that the monitoring of a smaller caseload is disproportionately expensive compared to the monitoring of a larger one, as the former does not result in a sufficient number of monitored days to attract the substantially reduced tariffs achievable by the latter. As such, under the current contract monitoring one individual via GPS for a 15½ month order would cost approximately £9,285 if that were the first such order to be monitored in any given accounting period, but just £1,860 if it were the 1000th.

31. On average, the daily rate for GPS technology under the current contract is approximately £1 per day higher for equivalent levels of use. Thus, if in the longer term the use of GPS were to replicate the current use of RF technology, the cost of monitoring a 15½ month CPO would equate to £3,380. As such, each additional 100 people made subject to GPS monitoring for that length of time equates to an additional cost of **£338,000**. This figure is however highly dependent on uptake.

32. In the short term, it is anticipated that GPS uptake will be limited in scope (see paragraph 35 below) meaning that the higher tariffs are likely to apply. It is however reasonable to assume

that at least some of these costs will be offset by a reduction in the costs of RF monitoring (on the basis that individuals made subject to GPS monitoring may otherwise have been made subject to RF monitoring). Thus, the £9,285 cost of a 15½ month GPS order could potentially be reduced by £2,910 (the cost of RF monitoring for the same period). In this scenario, replacing RF monitoring with GPS monitoring for 100 individuals for the length of a 15½ month order would cost **£637,500**.

33. Before GPS technology is made available across the country, it is anticipated that small scale demonstration projects will be undertaken. Under the current contract this arrangement would attract the highest pricing tier due to the small number of tagging days associated with such a project. Monitoring 50 individuals for a period of 6 months under the present contract would equate to a cost of **£188,750**.

34. In addition to the approval of devices using GPS technology, it is anticipated that the Scottish Ministers will in the future consider enabling the use of technologies designed to monitor an individual's consumption of alcohol (such as transdermal alcohol monitoring), drugs or other substances. There is no provision in the present contract for the delivery of such a service, and as such it is not currently possible to make an accurate estimate of the likely cost of implementing this form of monitoring.

35. It is anticipated that any rollout of alcohol monitoring will be preceded by a small scale demonstration project, and any such project would require the Scottish Government to procure a relevant service provider. The financial costs associated with the use of alcohol monitoring technology will therefore need to be made clear in the Policy Note accompanying the relevant Scottish statutory instrument approving the use of such devices.

## **COSTS ON THE SCOTTISH COURTS AND TRIBUNALS SERVICE**

36. It is not anticipated that the provisions of Part 1 of the Bill will lead to an overall increase in the number of cases dealt with by the courts.

37. The Scottish Court and Tribunal Service (SCTS) estimates that the changes to restricted movement requirement could however potentially lead to an increase in the number of breaching or review hearings and in the number of applications to amend addresses or curfew times. Such an increase would have an impact on court time and associated staff and accommodation resources.

38. The SCTS has indicated that, based on the number of relevant community disposals currently imposed and assuming a 50% increase (with associated increases in breaches and miscellaneous applications), the additional costs are broadly estimated at around **£800,000** per year for the Sheriff Court and **£9,500** per year for the Justice of the Peace courts. For consistency, the summary costs table below indicates the relative impact of a 10% increase in keeping with the other calculations.

39. Paragraph 2 of schedule 1 of the Bill provides that where the court makes an offender subject to a listed order - an RLO, a CPO (except in relation to a CPO imposed for default in payment of a fine) or a DTTO - in the knowledge that they are already subject to another of those

listed orders, the clerk of court must inform the person responsible for monitoring the offender's compliance with the existing order (so far as that person's identity can be reasonably ascertained) as well as the local authority in which the offender resides.

40. The SCTS has estimated that, based on the same assumed increase in relevant disposals as noted at paragraph 38 above (50%), and assuming that 20% of relevant community disposals relate to persons already subject to an existing order, the costs incurred in additional staff time will amount to around **£232,000** a year. Again, for the sake of consistency the summary costs table below indicates the relative impact of these provisions in the event of a 10% increase in cases.

41. Finally the SCTS has indicated that it will require to configure its IT systems to accommodate the new electronic monitoring orders, and has estimated that this work may result in non-recurring costs of up to **£30,000**.

## **LOCAL AUTHORITIES**

42. Local authorities are responsible for implementing community sentences as part of their wider responsibility for criminal justice social work. Just over £100 million per year is provided to local authorities for this purpose. For present purposes, it therefore falls to local authority criminal justice social work offices to provide reports to the court in relation to an individual's suitability to be made subject to any given community disposal, and to supervise individuals made subject to a CPO with an restricted movement requirement.

43. It is not anticipated that the provisions of Part 1 of the Bill will lead to a substantial increase in the overall number of CPOs imposed by the courts. As noted above, it is expected that the amended restricted movement requirement will be used in relation to individuals who are already before the courts and would otherwise have been made subject to an RLO or other community disposal.

44. That notwithstanding, it is possible to estimate the potential cost increase were there to be an overall rise in the number of individuals receiving a CPO. The "2014/15 Cost of the Criminal Justice System" publication<sup>1</sup> estimates that the average cost of a Criminal Justice Social Work Report is £406 and the average cost of a CPO is £2,259. Thus the additional cost of every 100 individuals who would not otherwise have been made subject to a community sentence is **£266,500**.

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

45. It is not anticipated that there will be any new costs falling on other bodies, individuals or businesses as a result of these provisions.

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<sup>1</sup> <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>

**SUMMARY OF COSTS RELATING TO PART 1 OF THE BILL**

<b>COSTS FALLING ON THE SCOTTISH GOVERNMENT</b>		
<b>Provision</b>	<b>Anticipated costs</b>	<b>Potential further cost if use increases</b>
<b>CPO</b> (paragraphs 10-16)	<b>Minimal</b> (offset by reduction in costs of RLOs)	<b>£291,000</b> (per 100 additional individuals made subject to a 15½ month order)
<b>SOPO</b> (paragraphs 17-19)	<b>£16,170</b> (per 7 individuals monitored per year)	<b>£16,170</b> (per additional 7 individuals monitored per year)
<b>Home Leave</b> (paragraphs 23-26)	<b>£48,600</b> (per 50 prisoners monitor for six periods of 7 days leave)	<b>£48,600</b> (per additional 50 prisoners monitor for six periods of 7 days leave)
<b>GPS Technology</b> (Paragraphs 28-33)	<b>£188,750</b> (based on a demonstration project monitoring 50 individuals for a total of 6 months)	<b>£338,000</b> (per additional 100 individuals made subject to a 15½ month order and assuming replication of RF level of use)  <b>£637,500</b> (per additional 100 individuals made subject to a 15½ month order and assuming RF offset)
<b>COSTS FALLING ON LOCAL AUTHORITIES</b>		
<b>Provision</b>	<b>Anticipated costs</b>	<b>Potential further cost if use increases</b>
<b>CPO</b> (paragraphs 42-44)	<b>Minimal</b> (no absolute increase in numbers anticipated)	<b>£266,500</b> (per additional 100 individuals who would not otherwise have been made subject to a community sentence)
<b>COSTS FALLING ON THE SCOTTISH COURTS AND TRIBUNAL SERVICE</b>		
<b>CPO</b> (paragraphs 37-38)		<b>£160,000</b> (Sheriff Courts per year based on a 10% increase in the number of relevant orders)

		imposed)  <b>£1,900</b> (Justice of the Peace Courts per year based on a 10% increase in the number of relevant orders imposed)
<b>Notification of multiple orders</b> (paragraphs 39-40)		<b>£46,400</b> (per year based on a 10% increase in the number of relevant orders imposed)
<b>IT costs</b> (paragraph 41)	<b>£30,000</b>	

***Part 2 of the Bill - sections 17 to 35 – disclosure of convictions***

46. Part 2 of the Bill makes a number of changes to the system of disclosure of previous convictions. These changes, made to the 1974 Act, relate to the system of what is called basic disclosure and can be split into the following general areas:

- Less disclosure - reducing the period of time someone with a previous conviction has to disclose it;
- Extension of legal protections for individuals with a previous conviction not to have to disclose – providing for the application of the 1974 Act to individuals who receive sentences greater than 30 months up to and including 48 months in length; and
- Accessibility of the legislation - improving the use of terminology within the 1974 Act, changing the operation of certain rules and improving the lay out of the 1974 Act including removing redundant provisions.

47. Details of the cost estimates for each of these areas is as below.

**COSTS ON THE SCOTTISH ADMINISTRATION**

***Less disclosure - reducing the period of time someone with a previous conviction has to disclose it***

48. Provisions under the heading ‘less disclosure for people with previous convictions’ make a number of changes to the length of time that people with previous convictions have to disclose such information. For example, the length of time that a person who has received a court imposed financial penalty has to disclose will fall from 5 years to 12 months (and from two and a half years to 6 months if aged under 18 at the time of conviction).

49. Alongside the rules governing self-disclosure (contained in the 1974 Act and which are being reformed in this Bill), the disclosure periods set in the 1974 Act are used for the purposes of state disclosure through the Police Act 1997. The system of state disclosure is operated by Disclosure Scotland, an agency of the Scottish Government.

50. The impact on Disclosure Scotland of changes to disclosure periods is that the existing rules specification, and the dependent algorithm (the software determines automatically the content of basic disclosure certificates), will require to be adjusted to reflect the new disclosure periods. Disclosure Scotland have advised that the exact cost impact on them does depend on wider changes they are planning to make to their IT systems.

#### *Disclosure period changes*

51. Separate from this Bill, Disclosure Scotland is developing a new IT system to modernise the delivery of its products and services. Once implemented, this system will provide a more flexible platform than presently exists and this includes incorporating the consequent changes to disclosure certificate production brought about by the provisions of the Bill. For the purposes of this Financial Memorandum, it is assumed Disclosure Scotland's new IT system is in place.

52. The Bill will require Disclosure Scotland to change the computerised algorithm used to determine which convictions are spent and which are not. The Bill makes fundamental changes which will affect the current algorithm. There will be initial costs to write a rule specification for the new algorithm, developing the software to apply it and the testing of this to the required degree of accuracy against real-world data in high volumes. This will then be integrated and deployed into the production environment, relevant staff trained and accuracy monitored and continually tuned. These initial setup costs will be around **£100,000**. There will be no on-going additional costs as a result of these changes.

#### *Mental health orders – compulsion order disclosure*

53. The Bill introduces a right for a person subject to a compulsion order to apply to the Mental Health Tribunal for Scotland (“the Tribunal”) for a determination of their disclosure requirement in respect of a conviction resulting in the compulsion order. This right to apply becomes available once at least 12 months have elapsed since imposition of the compulsion order. This type of mental health order is available to the court following conviction (including a finding under section 55(2) of the Criminal Procedure (Scotland) Act 1995) and is deemed suitable for cases where a person may pose a risk to themselves or another person.

54. There will potentially be some new costs associated with the right to have a review of a person's disclosure requirement. The review mechanism is not automatic and the person subject to the compulsion order must apply for a review to be heard. This right to review becomes operative some 12 months after the compulsion order has been imposed and further reviews can be heard every 12 months thereafter if the compulsion order remains in place.

55. It is likely that consideration of the on-going need to disclose will often be considered on the same day as the Tribunal is considering other applications relating to the compulsion order e.g. whether to revoke the compulsion order. As such, it is thought that some hearings already taking place may in practice become slightly longer as the additional issue of on-going disclosure is considered as part of the overall hearing.

56. In 2016/17, there were 191 cases before the Tribunal concerning patients subject to compulsion orders where the need for the continuation of the compulsion order was considered.

Based on information provided by the Tribunal, each Tribunal costs an estimated £1,200 in fees for members of the Tribunal (“panel fees”).

57. A compulsion order can relate to risks posed by a person either to themselves or the public or a mix of both. Where a person poses risks to the public in any way, then the statutory test to be applied by the Tribunal is such that disclosure should continue. As such, it is only persons subject to a compulsion order due to the risks they pose to themselves who will be able to have the need for disclosure removed. Within this context, it is considered that only a minority of people subject to a compulsion order will seek to have the need for disclosure reassessed. This reflects the fact that it is anecdotally understood that most compulsion orders are imposed due to risks posed by the person to the public.

58. On this basis, it is considered there would potentially be applications for the on-going need to disclose a conviction to be reviewed in approximately 20% of cases (38 applications). If that were to happen, that would potentially involve a cost of £1,200 per application for each panel fee. It is, however, anticipated that the Tribunal would hope to continue to meet its internal target of holding 55% of its cases as multiple hearings on the same day as another Tribunal hearing. In instances where two hearings are heard on the same day by the same panel, only one panel fee is incurred.

59. With this in mind, if the Tribunal were to hold 55% of the 38 projected hearings as multiple hearings, then this would result in an additional 28<sup>2</sup> panel fees being incurred over the course of the year. This amounts to **£33,600** per year in additional panel fees.

60. There is clearly some uncertainty about the estimated number of disclosure reviews sought. This is because there is no definite data about compulsion orders in respect of reasons for imposition in terms of risks i.e. does a person pose a risk to the public or to themselves or a mix of both. For illustrative purposes in the Financial Memorandum, if 50% of persons subject to a compulsion order were to seek a review of the need for disclosure each year, this would amount to 95 applications. This equates to **£84,000** in additional panel fees.

61. Training will be required for members of the Tribunal. This is likely to cost **£5,000**. In addition, the Tribunal would need to adjust their case management IT system to reflect these new responsibilities. The Tribunal has advised this would cost in the region of **£15,000**.

62. The Scottish Government anticipates costs to the Scottish legal aid fund. These will be related to both Advice and Assistance (a type of legal aid which does not include representation) and for representations at a Tribunal hearing on behalf of the person subject to the compulsion order. The provisions in the Bill require that the Tribunal consider the narrow question of

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1. This is calculated as follows. 55% of 38 applications is 21 cases. These 21 cases would be held as part of a multiple hearing day, hence only incurring half of the cost that they otherwise would. This would mean 10.5 panel fees incurred. With 21 of the 38 cases being held as part of a multiple hearing day, this means 17 cases will be heard as a single hearing and as such will incur one panel fee each. The 17 panel fees is added to the 10.5 panel fees above, giving us 27.5 panel fees. The Tribunal does not pay half fees to members, so the above figure of 27.5 should be taken to be a projected 28 panel fees.

whether disclosure should continue. Representation is directly related to that question and it is considered the costs in an average case should total approximately £560. This estimate is based on the costs to the Scottish legal aid fund of existing cases relating to compulsion orders.

63. With 38 applications expected, this equates to £21,280 a year in legal aid costs. Again for illustrative purposes, if the total number of applications were higher than expected at 95 (i.e. applications in respect of 50% of the total number of compulsion orders in force rather than 20%), then legal aid costs would total £53,200.

**Extension of legal protections for individuals with a previous conviction not to have to disclose – providing for the application of the 1974 Act to individuals who receive sentences greater than 30 months up to and including 48 months in length**

**Accessibility of the legislation - improving the use of terminology within the 1974 Act, changing the operation of certain rules and improving the lay out of the 1974 Act including removing redundant provisions**

64. It is not anticipated that there will be any new costs falling on the Scottish Administration as a result of these provisions in Part 2 of the Bill.

**COSTS ON LOCAL AUTHORITIES**

65. It is not anticipated that there will be any new costs falling on local authorities as a result of Part 2 of the Bill.

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

66. It is not anticipated that there will be any new costs falling on other bodies, individuals or businesses as a result of Part 2 of the Bill.

67. There is no direct cost impact of the disclosure period changes in respect of the requirements falling on individuals. Taking the example of the court-imposed financial penalty, what this will mean in practice is that a person with such a conviction will more quickly reach a point following conviction (12 months rather than 5 years) where they will not have to disclose the conviction when asked on, say, a job application form or in a job interview. This has no direct cost impact.

68. There may be some cost benefits for individuals who will be subject to new disclosure periods which will require less disclosure than previously has been the case. This should allow in some cases persons to be able to, for example, access employment more easily than previously and obtain home insurance at lower rates. It is not possible to quantify these cost benefit estimates specifically.

69. The estimated costs associated with Part 2 of the Bill are as summarised in the table below.

<b>Part 2 of the Bill – disclosure of convictions – estimated costs</b>			
	<b>Mental Health Tribunal for Scotland</b>	<b>Disclosure Scotland</b>	<b>Scottish legal aid fund</b>
Non-recurring costs incurred prior to implementation	£20,000 (paragraph 61 - training and IT requirements)	£100,000 (paragraphs 51-52 - updating IT system)	None
<b>Estimated non-recurring costs</b>	<b>£120,000</b>		
Year 1	£33,600 (paragraphs 53-59 - fees for panel members)	None	£21,280 (paragraphs 62-63 - for representation in Tribunal review hearings)
Year 2	£33,600 (paragraphs 53-59 - fees for panel members)	None	£21,280 (paragraphs 62-63 - for representation in Tribunal review hearings)
<b>Total costs</b>	<b>Non-recurring - £120,000</b> <b>Recurring - £54,880 per year</b>		

### **Part 3 of the Bill – sections 36-47 – PAROLE BOARD FOR SCOTLAND**

#### **COSTS ON THE SCOTTISH ADMINISTRATION**

70. There are three main elements to the Parole Board changes. These are as follows:

- Changes to the composition, appointment and reappointment terms of Parole Board members;
- Changes to functions and requirements of the Parole Board in relation to prisoners; and
- Independence and administrative arrangements of the Parole Board.

#### ***Changes to the composition, appointment and reappointment terms of Parole Board members***

71. Provisions in the Bill will remove the requirement for the Parole Board membership to include a Lord Commissioner of Justiciary and a registered medical practitioner who is a psychiatrist. Whilst composition will change, this move will have no impact on the overall number of Parole Board members and Tribunal and oral hearings will continue to be conducted by a three person panel chaired by a legal member. However, by using a different type of member this change may result in marginal savings of around £14,000 based on existing daily fee rates.

72. The Bill amends the term of office for Parole Board members to bring them in line with other tribunals. The intention is to change the initial period of office to a five-year term with the potential for automatic reappointment every 5 years thereafter. This is expected to result in modest savings in annual recruitment costs and training.

#### ***Changes to functions and requirements of the Parole Board in relation to prisoners***

73. The Bill provides statutory requirement for Parole Board reviews of certain sentences. In the case of a prisoner whose case has been considered by the Parole Board, and who is serving a relevant determinate sentence (apart from a recalled extended sentence prisoner), the Bill provides that a prisoner will be entitled to have their sentence reviewed within 12 months of the date of the consideration for initial release; or any further consideration for release where the prisoner's licence has been revoked and they have been returned to prison. This is currently what happens in practice but to provide clarity the Scottish Government proposes to amend the legislation. This is therefore not anticipated to result in any additional financial costs on the Parole Board.

74. The Bill makes provision to amend section 17A of the 1993 Act, in relation to the recall of prisoners released on home detention curfew, which allow a prisoner to make representations as to their revocation. To address undue delays, the Bill provides that the representations are made within six months of the person being informed or later as allowed by the Parole Board on cause shown by the person. It is expected that no financial impact will arise from introducing this time limit, other than a negligible saving as a result of the reduced administrative burden in tracing records that may be a number of years old. The overall process for prisoners making representations as to their revocation will not change.

### **Administrative arrangements of the Parole Board**

75. The provisions in the Bill allow the Scottish Ministers, by regulations, to authorise the Chairperson of the Parole Board to make administrative arrangements for the Parole Board, including the establishment of a management committee.

76. There will be some minor costs associated with the appointment of two non-executive directors to the management committee to provide expertise in finance and governance and the formation of sub-committees, arrangements for which will be set out in secondary legislation as discussed above. The Scottish Government considers that additional costs of around **£14,000** will be required which can be met from the existing Parole Board budget.

### **COSTS ON LOCAL AUTHORITIES**

77. It is not anticipated that there will be any new costs falling on local authorities as a result of Part 3 of the Bill.

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

78. It is not anticipated that there will be any new costs falling on other bodies, individuals or businesses as a result of Part 3 of the Bill. The Bill makes provision to amend section 17 of the 1993 Act to remove the word ‘immediate’ to extend to all directions in respect of the release after recall to prison. For consistency, the Bill makes provision to reword this section to allow for release “without undue delay”. It does not mean that a prisoner will be held any longer than necessary or that no-one will be released on the day the decision is made by the Parole Board, where appropriate. Consideration will be given to everyone on an individual needs basis. This approach, which allows for better planning of social needs, can reduce reoffending in the longer-term and thus have a positive impact on individuals.

### **SUMMARY OF COSTS FALLING ON THE SCOTTISH ADMINISTRATION**

#### **Management Committee/Sub-Committee(s)**

<b>Paragraph 76</b>	<b>Number of Members</b>	<b>Time Commitment per annum</b>	<b>Estimated cost per day</b>	<b>Estimated Recruitment costs</b>	<b>Total cost</b>
<b>Management Committee</b>	2	10 days	£300	£1000	<b>£7,000</b>
<b>Sub-Committee(s)</b>	3	12 days	£205*	nil	<b>£7,380</b>
<b>Total</b>					<b>£14,380</b>

\*estimated at cost of general member daily fee

*This document relates to the Management of Offenders (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 22 February 2018*

# **MANAGEMENT OF OFFENDERS (SCOTLAND) BILL**

## **FINANCIAL MEMORANDUM**

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