

# **CHILDREN (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 Children (Scotland) Bill, introduced in the Scottish Parliament on 2 September 2019.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 52-EN);
  - a Policy Memorandum (SP Bill 52-PM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 52-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.

### **THE BILL**

4. The Children (Scotland) Bill is informed by the outcome of the consultation on the Review of Part 1 of the Children (Scotland) Act 1995 (the 1995 Act). Part 1 of the 1995 Act covers parental responsibilities and rights and contact and residence cases relating to children when parents are no longer together. The consultation responses have been published where the Scottish Government has permission to do so<sup>1</sup>. The Scottish Government has also published an analysis report<sup>2</sup>.
5. The Bill focuses on a number of key themes: ensuring the views of the child is heard in contact and residence cases; protecting victims of domestic abuse; establishing a register of Child Welfare Reporters (CWRs); regulation of child contact centres and parental responsibilities and rights (PRRs).

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<sup>1</sup> The consultation and responses where the Scottish Government have permission to publish them are at the link below: <https://consult.gov.scot/family-law/children-scotland-act/>

<sup>2</sup> <https://www.gov.scot/publications/analysis-consultation-responses-consultation-review-children-scotland-act-1995/>

6. The Bill covers a variety of areas. The areas that will have financial implications are:
- establishing a register of CWRs;
  - establishing a register of curators ad litem in cases under section 11 of the 1995 Act;
  - amending section 11 of the Matrimonial Proceedings (Children) Act 1958;
  - regulation of child contact centres;
  - prohibition of personal conduct in proceedings involving vulnerable witnesses or victims of offences in certain cases;
  - ensuring the views of younger children are heard;
  - clarification that a person under the age of 16 may apply for, and be granted, an order under section 11 of the 1995 Act;
  - providing an explanation of decisions to the child;
  - investigating reasons for non-compliance with orders under section 11 of the 1995 Act; and
  - giving the Principal Reporter in a Children's Hearing the right of appeal against a sheriff's decision.
7. The financial cost of this Bill will fall mostly to the Scottish Government through direct funding of contracts for operating and managing a register of CWRs. Other costs on the Scottish Administration will fall to the Scottish Courts and Tribunals Service (SCTS). The costs of the Bill are divided into implementation and ongoing costs.

## **COSTS ON THE SCOTTISH ADMINISTRATION**

### **Costs to the Scottish Government**

#### *Establishing a register of CWRs*

8. The most significant costs falling directly on the Scottish Government will be in relation to the establishing of a register of CWRs. A CWR is appointed by the court either to undertake enquiries and report to the court or to seek the views of the child and to report any views expressed by the child to the court.
9. As discussed below there are cost implications for setting up a new structure for managing a new CWR service and payment of Child Welfare Reports that are currently privately funded.
10. Currently, CWRs are appointed from lists held by the Court of Session and the six Sheriffs Principal. There are no formal training or qualifications requirements for CWRs and their appointment to the lists is not time limited.
11. Section 8 of the Bill introduces a new system for CWRs. The Court of Session and the six Sheriffs Principal across Scotland will no longer have responsibility for maintaining the lists of CWRs. Instead, a register will be held by the Scottish Ministers and CWRs will be required to meet standards laid down by secondary legislation in terms of qualifications, training and experience. The Scottish Government considers that the costs of administering the existing lists by SCTS currently would be equal to the costs to SCTS of requesting a CWR under the new arrangements.

12. The total number of CWRs who are anticipated to be on the register is 421 which will therefore be used as the basis for all projected costs. This figure is based on information provided by the Sheriffs Principal that there are approximately 400 CWRs appointed to the lists held by the six Sheriffs Principal across Scotland. In addition, there are 21 individuals on the list held by the Court of Session who may be appointed as a CWR.

13. Due to secondary legislation setting out the eligibility criteria for CWRs being required the Scottish Government envisages phased implementation. Based on the illustrative timetable below, set up costs would be required from April 2022 and Scottish Government would expect ongoing costs to be required from April 2023. The timetable assumes that a contract would be awarded for operating and maintaining the register of CWRs. If the work were to be done in-house then a similar timetable would be required to establish a new team and develop new procedures.

Table 1: timetable for implementation of register of CWRs.

Timing	Activity
Children (Scotland) Bill gains Royal Assent	Summer 2020
Preparation of secondary legislation	September – December 2020
Consultation on secondary legislation	January – March 2021
Analysis of consultation responses and revising secondary legislation	April – September 2021
Secondary legislation laid in Parliament	October – December 2021
Tendering of contract for CWRs	April 2021 – March 2022
Contract for CWRs awarded	from April 2022
Set up time for new contractor	April 2022 – April 2023
New regime operational	April 2023

#### *Costs of operating and managing the register of CWRs*

14. The Scottish Ministers will have the power to run the operation and management of the register of CWRs or to contract this out. A similar contract operates for safeguarders in the Children’s Hearings system<sup>3</sup>. Safeguarders provide an independent consideration of assessments and plans for children in the Children’s Hearings system and make their own recommendations on

<sup>3</sup> <https://www.children1st.org.uk/help-for-families/safeguarders-panel/>

what they think is needed to achieve the best interests of the child. This is a similar role to CWRs and the Scottish Government is aware that a number of CWRs are also Safeguarders. This contract includes recruitment and selection, training, managing appointments, complaints and monitoring performance of Safeguarders across Scotland. These are the same as the criteria required for a contract for CWRs.

15. To estimate costs in relation to contracting out the operation and management of registers of CWRs, the Scottish Government has considered the experience of the contract for safeguarders. In 2018/19, the management cost for 150 safeguarders was approximately £0.83m. Of this, £0.6m was for staff costs and £0.1m was for training costs. The remainder was for administration and office costs. This cost covers staff costs to administer the list of safeguarders and safeguarder training costs. The Scottish Government is therefore assuming that a similar management contract for 421 CWRs (including both Court of Session and sheriff court reporters) could cost approximately £2.33m a year (£0.83 million divided by 150 multiplied by 421).

16. These costs may be less due to economies of scale. As the secondary legislation is progressed these costs will be revisited.

17. If the Scottish Government were to contract out the management and operation of the register of CWRs, this would still require a small team within the Scottish Government to both procure the contract and also monitor and manage the contract with the successful organisation. This could cost £0.11m per year from 2022/23 onwards in addition to the cost of managing the contract for CWRs. This has been estimated as a team leader at the equivalent of the Scottish Government C1 grade (based on the current cost of a C1 including NI contributions this is £0.07m). A B2 policy officer would also be required to assist in the running of the contract (based on the current cost of a B2 this would be £0.04m).

18. There will be set-up costs in 2022/23 whether the work is kept in-house or is contracted out. The Scottish Government expects these costs to be on the same lines whether the work is kept in-house or is contracted out as the tasks involved will be along the same lines. The Scottish Government has considered set-up costs by looking at the costs if the work is done in-house. As outlined in more detail below, if the Scottish Government decided to operate the register of CWRs in-house then there would be set up costs envisaged of between £1.56m and £1.61m. This covers salaries for staff members to set up the new system and to evaluate the existing CWRs who wished to retain their role under the new structure, IT set up costs and accommodation costs. It also includes costs of £0.67m for providing initial training to CWRs based on the training figures explained in paragraph 32.

Table 2: Total set-up costs

	<b>2022/23 £m</b>
<b>Staff costs</b>	0.66
<b>Accommodation costs</b>	0.17 – 0.22
<b>IT costs</b>	0.06
<b>Training of CWRs</b>	0.67
<b>Total costs</b>	<b>1.56 – 1.61</b>

19. During the set up period it is envisaged that there would be employee costs of £0.66m as detailed in the table below.

Table 3: Employee set-up costs in 2022/23

	No. of Employees	Scottish Government Grade	Average Salary (Inc. On-Costs) £m	Total Salary Costs £m
<b>Administrative costs</b>	10	A4	0.03	0.30
<b>Supervisor costs</b>	2	B2	0.04	0.08
<b>Unit Head costs</b>	1	C1	0.07	0.07
<b>Panel for recruitment of CWRs</b>	3	C1	0.07	0.21
<b>Total Employee Costs (£m)</b>			<b>0.21</b>	<b>0.66</b>

20. 10 administrative staff at Scottish Government grade A4 would be required to undertake the administration involved in recruitment of the CWRs. In addition two supervisors (estimated at Scottish Government grade B2) would be required to manage the administrators and handle any complaints raised by individuals during the application process. In addition a unit head (estimated at Scottish Government grade C1) would be required to oversee the recruitment process.

21. In addition, if the contract is managed in-house staff would be required to undertake the recruitment of CWRs. The Scottish Government assumes that existing CWRs would be given the opportunity to apply to be on the register. To be on the register existing CWRs would need to meet the new eligibility criteria. There may also be existing CWRs who do not wish to be on the register. The Scottish Government has estimated that between 50% - 75% of existing CWRs would wish to be on the register and would meet the required eligibility criteria. Therefore, to ensure the service continues to be delivered a recruitment exercise for between 100 and 200 CWRs would be required. This would ensure the number of CWRs remains the same. Further work will be undertaken by the Scottish Government to establish the number of CWRs required.

22. Based on the assumption that the Scottish Government would receive applications from 400 individuals and assuming a panel could sift five applications an hour followed by a meeting to discuss the outcome of the sift and produce a sift report this could require 100 hours (400 divided by five plus 20 hours for discussion on sift and production of sift report). The Scottish Government would then interview 300 individuals for the 100 to 200 vacant posts and an interview panel could undertake five interviews a day this could take 60 working days (12 weeks). A report and recommendations for appointment to Scottish Ministers could take an additional 20 working days (4 weeks). It is assumed that the sift and interview panel would need to be senior members of staff. This has been estimated at Scottish Government C1 grade and that three C1s would be required. These members of staff would be retained post the recruitment of the new CWRs to undertake the cycle of yearly appraisals of CWRs.

23. The location of the team to manage the operation of the register of CWRs has not yet been confirmed. It may be possible for the team to be located in an existing Scottish Government building. However, this is not certain. To avoid the need to move accommodation after the initial set up period, it is envisaged that the accommodation costs would reflect the total ongoing staff headcount of 31 employees as explained in paragraph 29 below. The accommodation costs reflect

fit out costs of between £0.17m and £0.22m (based on a cost of £700 per square metre and a requirement of between 272 and 340 square metres – between 8-10 square metres per FTE as estimated by Scottish Government Estates Division). Professional and legal fees of up to £10,000 (including VAT) to search for a suitable property, to agree terms and to complete legal agreements would also be incurred.

24. It is envisaged that the new staff would require access to the Scottish Government IT system (SCOTS). The outline costs in Table 2 have been estimated on the basis of £4,000 per person to provide a complete installation of SCOTS into a non-SCOTS building as well as hardware and software costs.

25. The table below estimates the annual running costs of operating the new register of CWRs if the contract is managed in-house.

Table 4: Annual running costs

	<b>2023/2024 £m</b>	<b>2024 onwards £m</b>
<b>Staff costs</b>	1.19	1.19
<b>Accommodation costs</b>	0.07	0.07
<b>Set up IT costs for additional staff</b>	0.06	N/A
<b>IT costs</b>	0.02	0.04
<b>Training of CWRs</b>	0.67	0.67
<b>Total costs</b>	<b>2.01</b>	<b>1.97</b>

26. Based on the number of staff currently employed to administer the Safeguarders contract and also the number of staff to undertake similar roles within, for example, a tribunal, the Scottish Government has estimated that 22 staff at Scottish Government grade A4 would be required. In addition, four supervisors would be required to manage the A4 band staff and also handle complaints about CWRs and undertake work in relation to appointments, reappointments and resignations. There would also need to be a C1 unit head who would oversee the process and develop policies.

27. In addition, staff would be required to undertake appraisals of CWRs. Each CWR would be required to have an annual appraisal. The Scottish Government has assumed that an appraisal would take two days to produce as this would involve reading information submitted, meeting with the CWR and writing the report. Appraisals would need to be carried out by a more senior member of staff. This has been assumed at C1 grade. The appraisals would take 842 days (421 CWRs multiplied by two days per appraisal). This would require four C1 grade staff, based on an assumption of a member of staff working 220 days per year.

28. The table below shows the staff costs:

Table 5: Estimated staff costs

	<b>No. of Employees</b>	<b>Scottish Government Grade</b>	<b>Average Salary (Inc. On-Costs) £m</b>	<b>Total Salary Costs £m</b>
<b>Administrative costs</b>	22	A4	0.03	0.66
<b>Supervisor costs</b>	4	B2	0.04	0.17
<b>Unit Head costs</b>	1	C1	0.07	0.07
<b>Appraisal of CWRs costs</b>	4	C1	0.07	0.29
<b>Total Employee Costs (£m)</b>			<b>0.21</b>	<b>1.19</b>

29. The staff would also require to be accommodated. Because it is not possible to forecast the availability of shared public sector accommodation, it is assumed, for cost estimates purposes that a privately rented shared building is required. As detailed in paragraph 23 above between 248 and 310 square metres would be required for the 31 members of staff. This has been estimated at £0.07m based on the cost in relation to the safeguarders contract.

30. As noted in paragraph 24, it is envisaged that the staff would require access to SCOTS IT facilities. There would be an additional cost in 2023/24 of set up for the extra members of staff who would be required after the implementation period. Based on the costs detailed in paragraph 24 above this is estimated at £0.06 (based on £4,000 per staff member and 15 additional members of staff recruited for 2023/24, following the 16 recruited for set-up in 2022/23).

31. Following installation, annual SCOTS maintenance charges are levied on a per laptop basis. Annual SCOTS maintenance costs have been estimated at a total of £38,750 (including VAT). These figures include dedicated networking costs. IT maintenance charges are generally set at a “per user” rate which for a SCOTS system, can vary between £800 and £1,270. The per use rate quoted here (being £1,250) is therefore in the high range. In 2023/24 these costs will be £20,000 as this will cover the 16 members of staff recruited for the implementation period. The IT costs for the other 15 members of staff would be covered in the set up costs mentioned in paragraph 30.

32. CWRs would also require to undergo training on topics such as domestic abuse, coercive control and report writing. Even if the administration and operation of the register of CWRs were to be managed in-house it is not envisaged that the training would be run in-house. Based on estimated costs of £400 per day from stakeholders of running courses the total cost of providing four days training to each CWRs is estimated at £0.67m (400x4x421).

33. Therefore, the Scottish Government estimates that the cost of running the register of CWRs to be between £1.97m and £2.33m per year. The Scottish Government has used the lower figures from doing the work in-house as it is unlikely work would be contracted out if that should be a more expensive option. Clearly, competition may reduce the costs of any contract.

*Costs of paying CWRs*

34. CWR fees are currently paid by either the parties to a case themselves or by SLAB if parties are eligible for legal aid. The table below shows the figures from SLAB for the last three years.

Table 6: SLAB funding of Child Welfare Reports

<b>Year</b>	<b>Estimated number of individual payments made for CWRs Costs</b>	<b>Estimated average cost per report (£m)</b>	<b>Estimated average cost per report x 1.6 to reflect the proportion of cases where SLAB fund both sides in a case and an estimate of percentage of cases in which the court splits the cost between parties (£m)</b>	<b>Total cost (£m)</b>
<b>2016/17</b>	1,711	0.028	0.045	3.0
<b>2017/18</b>	1,983	0.035	0.056	3.5
<b>2018/19</b>	2,263	0.027	0.043	3.7

35. Following the enactment of the Bill, this cost would no longer fall to SLAB. Instead, the cost of Child Welfare Reports would be met by the Scottish Government, either through the organisation contracted to manage the register of CWRs or directly if the Scottish Government should run the register in-house. Any cost savings to SLAB in administration of Child Welfare Reports would be minimal as this work is done by officials working on a range of tasks.

36. Currently the cost of Child Welfare Reports varies. If a Child Welfare Report which is legally aid funded is to cost in excess of £3,000 then permission is required from SLAB<sup>4</sup>. Figures from a SLAB report to the Family Law Committee of the Scottish Civil Justice Council<sup>5</sup> suggest that in 2016 10% of reports cost under £500; 18% cost between £501- £1,000; 25% cost between £1001-£2,000; 15% cost £2001 - £3,000 and 16% cost more than £3,000. This shows the variability in costs of Child Welfare Reports.

37. The Bill gives the Scottish Ministers the power to set the fee rates for CWRs by secondary legislation. Fee rates could be set in a variety of ways such as by using an hourly rate; by report (although reports may vary in complexity and size) or by page (although this may encourage long

<sup>4</sup> <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-meeting-papers-23-october-2017/paper-4-2---report-by-slab---child-welfare-reporters.pdf?sfvrsn=2>

<sup>5</sup> Ibid

reports). There could be a rate for reports covering the welfare of the child generally and a different rate for reports just aimed only at obtaining the views of the child. An hourly rate is likely to be more practicable as there are differences in the complexity of Child Welfare Reports. The Scottish Government proposes to consult in due course on the draft regulations setting out the fee rates that CWRs can charge.

38. Setting the fees centrally may lead to cost savings. Further work will be required in this area and the costs of the proposed fees will be set out in detail in the secondary legislation. It should also ensure consistency across Scotland as the report by SLAB to the Family Law Committee shows that costs of Child Welfare Reports vary across the country<sup>6</sup>. In the meantime, the Scottish Government estimates that the cost of meeting CWRs fees which are currently met through the legal aid fund would not fluctuate significantly.

39. Under the proposed new arrangements, the cost of CWRs would be met by the Scottish Government, either through the organisation contracted to manage the register of CWRs or directly.

40. This would mean that individuals who do not qualify for legal aid would not have to meet the CWRs costs, which would be a change from the current position<sup>7</sup>. The state paying for all Child Welfare Reports would remove a potential access to justice issue as evidence from stakeholder events suggests that parties not in receipt of legal aid may have to incur considerable expenditure meeting the costs of a CWR if one is appointed. The Scottish Government is not expecting an increase in demand for Child Welfare Reports but it will alleviate pressure on individuals who are ineligible for Legal Aid and have to meet the costs of a Child Welfare Report. The Scottish Government heard during stakeholder events and in consultation responses that some privately funded Child Welfare Reports cost £10,000. However, this cost is understood to be an exception to the rule and the average cost of a SLAB report has been used in the calculations below.

41. The table below shows estimated costs for 50, 100 and 200 Child Welfare Reports where, following changes made by the Bill, fees would be met by the Scottish Government rather than privately. The table is based on an average cost per report of £2,739. This figure is based on the average number of individual payments made by SLAB for CWRs costs over the last three years of £1,712. The figure of £1,712 was multiplied by 1.6. The 1.6 figure was provided by SLAB and takes into account the proportion of cases where SLAB fund both sides in a case and an estimate of the percentage of cases in which the court splits the cost between parties. The information on the number of privately funded cases is not currently collected. However, from discussions with stakeholders it is understood that this figure could be 10% of the number of all Child Welfare Reports funded by SLAB which is why the Scottish Government has used 50, 100 and 200 reports in the table below.

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<sup>6</sup> Ibid

<sup>7</sup> Ordinary Cause Rule 33.21 (7) provides that the costs of a Child Welfare Report should be met in equal share between all the parties. <https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court---civil-procedure-rules/ordinary-cause-rules>

Table 7: Cost of paying for Child Welfare Reports currently privately funded

	<b>50 Child Welfare Reports</b>	<b>100 Child Welfare Reports</b>	<b>200 Child Welfare Reports</b>
<b>Cost £m</b>	0.14	0.28	0.56

*Additional functions of CWRs*

42. Section 15 of the Bill introduces provision which requires the court to provide an explanation to a child if it is the child's best interest. This may require a CWR to relay a final decision or an important interim decision to a child. The Scottish Government would expect an explanation to be provided to the child concerned in every final decision if the court considers the child able to understand the decision and it is in the interests of the child. Younger children would be able to understand a decision if it was explained to them simply and in age appropriate language. However, the Scottish Government are aware that very young children or those with severe learning disabilities may not be able to understand.

43. Providing an explanation on final decisions and important interim decisions will have financial implications for the Scottish Government as they will be funding CWRs directly once they are regulated.

44. In 2018/19 there were 2,639 cases disposed of in the sheriff courts in relation to parental responsibilities and rights. In 2018/19 there were 3,554 family cases raised which involve children and 15,649 hearings in family cases involving children (excluding adoption and permanence)<sup>8</sup>. Of the 15,649 there were 6,655 Child Welfare Hearings, 1,383 proofs called and 239 proofs proceeding. The Scottish Government assumes that an explanation would be provided to a child as a result of each the proofs proceeding at a cost of £800 per decision explained. The £800 is based on estimates established during a working group on CWRs. It was suggested during this working group that obtaining the views of the child through a CWR would cost around £800<sup>9</sup>. This figure relates to 2015/16 but the Scottish Government considers it still to be accurate as since the working group SLAB have been undertaking work to monitor costs. As discussed in paragraph 91, 90% of explanations are likely to be given by the CWR. This means the cost for providing an explanation following all proofs would be £0.17m (800 multiplied by 239 multiplied by 90%).

45. An explanation of a decision would not be required after every Child Welfare Hearing as decisions will only be required to be explained if the decision is to vary or discharge an order or to make an order. Procedural decisions would not need to be explained. Therefore, Scottish Government has estimated that between a quarter and three quarters of Child Welfare Hearings would require an explanation to be given. The table below provides costings based on these estimates and the fact that it is assumed that in 90% of cases an explanation would be by CWRs. The total estimated cost of providing feedback in proofs and Child Welfare Hearings is between £1.53m and £3.93m (this is based on the figures in the table below plus the £0.17m for providing an explanation after proofs mentioned in paragraph 44 above).

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<sup>8</sup> Figures from SCTS

<sup>9</sup> <https://www2.gov.scot/Topics/Justice/law/17867/reporters>

Table 8: cost of providing an explanation of a decision to a child via CWRs

	<b>Explanation in 25% of Child Welfare Hearings</b>	<b>Explanation in 50% of Child Welfare Hearings</b>	<b>Explanation in 75% of Child Welfare Hearings</b>
<b>Cost (£m)</b>	1.19	2.34	3.59
<b>Cost All proofs (£m)</b>	0.17	0.17	0.17
<b>Total cost (£m)</b>	<b>1.36</b>	<b>2.51</b>	<b>3.76</b>

46. Section 16 of the Bill gives the courts a duty to establish why a contact and residence order has not been complied with. The Scottish Government expects that in a large proportion of cases the court will undertake this work themselves. However, there may be circumstances where the court wishes to appoint a CWR to produce a report on why an order has not been complied with. The Scottish Government understands that courts can already order a further Child Welfare Report but this procedure is not consistently used across Scotland.

47. Appointing a CWR to investigate why a contact and residence order has not been complied with would have cost implications. Figures from SLAB indicate that over the past three years there have been 522 applications for Legal Aid to seek to hold a person in contempt of court in cases under section 11 of the 1995 Act. Of these 522 applications, 361 applications for Legal Aid were granted.

48. The table below gives a range of costs for this based on an average cost of a SLAB funded report of £2,739. The Scottish Government has included figures for 522 additional Child Welfare Reports being required as this equates to the number of applications for legal aid for contempt of court proceedings.

49. The Scottish Government has also included a figure for half that number of Child Welfare Reports as the Scottish Government expects that the court would not appoint a CWR in every case:

Table 9: Cost of a CWR establishing why an order has not been complied with

	<b>261 additional Child Welfare Reports</b>	<b>522 additional Child Welfare Reports</b>
Cost (£m)	0.71	1.43

50. The Bill contains provisions which aim to ensure that the views of younger children are heard in contact and residence cases and that where views are taken this is done in a way that is appropriate to the child. The table below gives a range of estimated costs for allowing younger children to have their views heard by the court based on the average cost to a CWR to obtain the views of the child of £800 as explained in paragraph 44.

51. A range of between 50 and 200 more Child Welfare Reports has been given despite 2,639 cases relating to parental responsibilities being disposed of in 2018/19. The additional Child

Welfare Reports would be lower than the total number of cases for a number of reasons. Firstly, the views of children aged 12 or over are already being taken and the views of the youngest children would not be taken as they would not be capable of forming a view. In addition, a CWR may not be required in every case and a child may not wish to give their views. Section 1 of the Bill requires the court to consider the opinions of the child on the way they wish to give their views. Children may not wish to give their views via a CWR.

Table 10: Cost of CWRs establishing views of the child

	<b>50 more Child Welfare Reports</b>	<b>100 more Child Welfare Reports</b>	<b>200 more Child Welfare Reports</b>
Cost (£'000 per year)	40	80	160

52. None of the two additional functions of a CWR are envisaged to commence prior to the register of CWRs being established. Therefore any additional costs will not be incurred before April 2022.

*Costs of local authority CWRs in cases under section 11 of the 1995 Act*

53. In cases under section 11 of the 1995 Act the court may appoint a local authority to report on a child. This power is set out in section 11 of the Matrimonial Proceedings (Children) Act 1958 (the 1958 Act). Further provisions are set out in rules of court. The 1958 Act does not specify who a local authority should appoint as a reporter.

54. Section 14 of the Bill amends section 11 of the 1958 Act so that if a local authority employee wishes to continue to act as a CWR then the employee would need to apply to be on the register of CWRs and meet the required eligibility criteria. This will ensure that individuals have sufficient training.

55. Based on an average cost of £2739 per report, the table below shows a range of costs between £0.14m - £0.28m for 50 and 100 additional Child Welfare Reports respectively. The Scottish Government heard from stakeholders that there are very few Child Welfare Reports prepared by social work departments. The Scottish Government understands that there are Child Welfare Reports prepared by social work departments in the Comhairle nan Eilean Siar and Dumfries and Galloway. Figures from Comhairle nan Eilean Siar show that in 2018 it produced 25 Child Welfare Reports. This figure has been doubled to account for Dumfries and Galloway and then additional figures added to reflect the uncertainty of these number of reports that local authorities currently produce.

56. There will be costs incurred by the Scottish Government but savings to local government as currently local authorities fund the Child Welfare Reports. These Child Welfare Reports will now be funded by Scottish Government at the same rate as the rate that will be set for CWRs.

Table 11: Cost to Scottish of additional Child Welfare Reports as local authorities no longer funding them

	<b>50 additional Child Welfare Reports</b>	<b>100 additional Child Welfare Reports</b>
<b>Cost (£m)</b>	0.14	0.28

*Costs of curators ad litem in cases under section 11 of the 1995 Act*

57. A curator ad litem (curator) is appointed by the court to safeguard and promote the best interests of the child in a court case. Practice in relation to curators varies across the country. In some sheriffdoms, curators are appointed from the list of CWRs held by the Sheriffs Principal. In other areas curators are appointed from the panel of curators held by each local authority for permanence and adoption cases. The Scottish Government understands that a number of curators are also CWRs. In addition, the Scottish Government is aware that use of curators in section 11 cases varies across the country. For example from a survey of Sheriffs Principal in the sheriffdom of Edinburgh and the Lothians there have been four curator appointments in the first two months of 2019 whilst in the sheriffdom of South Strathclyde there have been six appointments for the whole of 2018/19.

58. Section 13 of the Bill establishes a separate register of curators who may be appointed to cases under section 11 of the 1995 Act. Eligibility criteria for curators will be set by secondary legislation. It is envisaged that one of the eligibility criteria would be being appointed to the panel of curators held by a local authority for permanence and adoption cases. From a questionnaire to all Sheriffs Principal in Scotland, the Scottish Government understands that there are approximately 20 curators who would not fall within this eligibility criteria.

59. The Scottish Government considers that the administration and operation of the register of curators would be similar to that required for the register of CWRs. Therefore, if this work was contracted out it is expected this would be part of the same contract. The additional 20 curators to cover those who would not already be on a panel of curators held by each local authority could cost approximately £0.11m per year (£0.83m divided by 150 multiplied by 20).

60. If the register is run in house the Scottish Government has estimated set up costs for the register of curators of £0.09m. This is based on the assumption that there would be two administrative staff at Scottish Government grade A4 to undertake the administration of the 20 curators who are not currently on the list of CWRs or on the panel held by a local authority for permanence and adoption cases. The supervision of these two members of staff would be undertaken by one of the supervisors appointed in relation to the register of CWRs. It is assumed that the two members of staff would be located with the staff to run the register of CWRs. The calculations are based on the assumptions made at paragraphs 20 to 25. In addition there would be training costs for the 20 curators estimated based on the same assumptions as for CWRs at paragraph 32 at £8,000.

Table 12: estimated set up costs

<b>Set up costs</b>	<b>2022/23</b>
<b>Staff costs (£m)</b>	0.06
<b>Accommodation costs (£m)</b>	0.01
<b>IT costs (£m)</b>	0.01
<b>Training costs (£m)</b>	0.01
<b>Total costs (£m)</b>	<b>0.09</b>

61. If the register is run in house the Scottish Government has assumed that the two administrative staff employed during the set up period would be required on an ongoing basis to administer the register. The IT costs have been estimated at £2500 based on the assumptions at paragraph 31. The Scottish Government assumes that the two staff would be accommodated with the staff employed to manage the register of CWRs. Therefore, ongoing costs have been estimated at £0.063m per year. It is assumed that the appraisal of the 20 curators on a yearly basis would be included within the work undertaken by the four members of staff appointed to undertake this role in relation to CWRs (see paragraph 27).

62. Under the proposed new arrangements, the fees charged by curators in section 11 cases would be met by the Scottish Government. As a result, there would be cost implications for Scottish Government and savings to local authorities.

63. The fee rate for curators who are appointed from the panel of individuals used for adoption and permanence cases is currently set and paid by each local authority. The Bill gives the Scottish Ministers the power to set by secondary legislation the fee rate for curators appointed in contact and residence cases. This will ensure consistency of fee rates across Scotland.

64. The Scottish Government will consult on the fee rate to be paid for curators. The approach taken is expected to be similar to the approach on the fees rates for CWRs outlined above. The table below provides an estimate of costs based on the average cost of a SLAB funded CWRs (£2,739) as the Scottish Government does not have figures for the cost of a curator. The Scottish Government expects numbers of curators in section 11 cases to be low and therefore has suggested costs between 100 and 300 curators. The figures provided are a range based on the number of curator appointments in the first two months of 2019 in the sheriffdom of Edinburgh and the Lothians (two per month x 12 x 6 sheriffdoms = 144). The Scottish Government expects these figures to be towards the lower end of the range because not all sheriffdoms will appoint as many curators due to differences in case load. In addition, the Bill requires the court to state on the interlocutor appointing the curator the reason for doing so. This is likely to reduce the number of curators being appointed.

Table 13: cost of curators fees

	<b>100 curators fees</b>	<b>200 curators fees</b>	<b>300 curators</b>
Cost (£m)	0.27	0.54	0.81

*Restricting self-representation in proceedings involving vulnerable parties or victims of offences*

65. There will be costs for the Scottish Government in relation to provisions which restrict self-representation in proceedings under section 11 of the 1995 Act involving vulnerable parties or victims of offences. The intention is that a party with relevant criminal convictions or civil protection orders against them (such as an interdict against domestic abuse) would be banned from carrying out personal cross-examination in an evidential hearing. The court would also have discretion to ban a party from personal cross-examination if the court considered this an appropriate step.

66. If a party is banned from self-representation then they would be entitled to be legally represented.

67. The Scottish Government considers, for two reasons, that the costs of this provision will be insignificant. First of all, most cases under section 11 of the 1995 Act do not go to proof (an evidential hearing). A 2010 study for the Scottish Government, “Understanding Child Contact Cases in Scottish Sheriff Courts”<sup>10</sup> noted, in paragraph 5.3, that 8 out of 182 cases on the Case Management System had gone to proof. That amounts to 4.4%. This is supported by figures from SCTS which suggest that in 2018/19 there were 239 cases for parental responsibilities and rights for which proof proceeded.

68. Secondly, the number of party litigants (people representing themselves) in family case is relatively low. In England and Wales, legal aid has largely been withdrawn from family cases: that is not the case in Scotland. The Scottish Government does not have hard figures on the number of party litigants but from speaking to stakeholders the Scottish Government has estimated that around 10% - 15% of litigants in family cases represent themselves.

69. The number of cases going to proof may increase in the future. The Family Law Committee of the Scottish Civil Justice Council consulted in Summer 2018 on a number of recommendations in relation to case management in family actions<sup>11</sup>.

70. This could reduce the number of Child Welfare Hearings but increase the number of proofs. However, the Family Law Committee of the Scottish Civil Justice Council is still considering how best to take forward the recommendations in this area and, as a result, this Financial Memorandum is based on the current position.

71. Based on figures from SCTS in 2018/19 there were 239 cases for parental responsibilities and rights for which proof proceeded. The cost of providing legal representation to a party banned from cross-examination and the other party might be around £2,000. This is the average cost of an ordinary divorce and is considered the most reliable figure available. As indicated above, both parties to the case would receive legal representation. However, as mentioned above 10-15% of litigants in family cases are party litigants. Therefore the Scottish Government has estimated the cost to be between £48k and £72k (2,000 x 239 x 10% or 15%).

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<sup>10</sup> <https://www2.gov.scot/resource/doc/334161/0109246.pdf>

<sup>11</sup> <https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations>

*Establishing a register of lawyers who could be appointed where a party has been restricted from self-representation.*

72. Section 8 of the Bill gives the Scottish Ministers power to establish a register of lawyers who could be appointed where a party has been restricted from self-representation. The Scottish Ministers will have the power to run the register themselves or to contract this to a third party or delegate the function to an appropriate public body. In 2018/19 there were 239 cases which went to proof. As mentioned in paragraph 68 from discussions with stakeholders the Scottish Government understands that between 10-15% of litigants in family cases are party litigants. Therefore, between 24 and 36 lawyers may be required in any year. To ensure that lawyers are geographically spread and available Scottish Government would assume that there would need to be 80 lawyers on the register.

Table 14: Costs of establishing register of lawyers

	<b>2022/2023</b>	<b>2023 onwards</b>
<b>Staff costs (£m)</b>	0.17	0.17
<b>IT costs (£m)</b>	0.03	0.006
<b>Total costs (£m)</b>	<b>0.20</b>	<b>0.176</b>

73. The Scottish Government has estimated that it would require two members of staff to deal with recruitment, checking of qualifications and processing requests from the court. Based on the average staff cost of an A4 this would cost £0.06m per year. A B2 member of staff would be required to manage the A4 members of staff at a cost of £0.04m. A C1 unit head would also be required to oversee the process and develop policies at a cost of £0.07m. The total cost would be £0.17m.

Table 15: Employee costs

<b>Employee Costs</b>	<b>No. of Employees</b>	<b>Scottish Government Grade</b>	<b>Average Salary (Inc. On-Costs) £m</b>	<b>Total Salary Costs £m</b>
<b>Administrative</b>	2	A4	0.03	0.06
<b>Supervisors</b>	1	B2	0.04	0.04
<b>Unit Head</b>	1	C1	0.07	0.07
<b>Total Employee Costs (£m)</b>			<b>0.14</b>	<b>0.17</b>

74. These costs are assumed to be applicable from 2022 onwards as these members of staff would be required to undertake work in relation to establishing the register of lawyers in 2022/2023. This work would include sifting of applications from individuals who wish to be on the register of lawyers.

75. The Scottish Government assumes that the staff would be accommodated within the existing Scottish Government estate. There would be minimal installation costs for setting up the new members of staff. This has been estimated at £20,000. Following installation, annual SCOTS maintenance charges are levied on a per laptop basis. Annual SCOTS maintenance costs have been estimated at a total of £6,250 (including VAT). These figures include dedicated networking costs.

IT maintenance charges are generally set at a “per user” rate which for a SCOTS system, can vary between £800 and £1,270. The per use rate quoted here (being £1250) is therefore in the high range.

76. Due to the need for secondary legislation to establish who will run the list and also set the criteria expected of lawyers, the Scottish Government expects the list to be established in 2022/23 and operational from 2023/24.

*Summary*

77. The table below indicates the estimated direct costs to the Scottish Government. The Scottish Government does not expect costs to arise before 2022/23.

Table 16: Direct costs to the Scottish Government

	2022/23	2023/24	2024 onwards	Paragraph Numbers
<b>Operating and maintaining register of CWRs (£m)</b>	1.67-2.44	2.12 -2.44	2.08-2.44	14 -33
<b>Payment of Child Welfare Reports which are currently privately funded (£m)</b>	0	0.14 – 0.56	0.14 – 0.56	34-41
<b>Providing an explanation of a decision to the child (£m)</b>	0	1.53 – 3.93	1.53-3.93	42-45
<b>Investigation into reasons for non-compliance with an order (£m)</b>	0	0.71 – 1.43	0.71-1.43	46-49
<b>Hearing views of younger children</b>	0	0.04 – 0.16	0.04 -0.16	50-52
<b>Amending section 11 of the Matrimonial Proceedings (Children) Act 1958 (£m)</b>	0	0.14 – 0.28	0.14-0.28	53-56
<b>Operating and maintaining register of curators (£m)</b>	0.09 – 0.11	0.06 – 0.11	0.06- 0.11	57-62
<b>Revised procedure for appointment of curators (£m)</b>	0	0.27 – 0.81	0.27-0.81	63-64
<b>Restricting self representation (£m)</b>	0	0.05 – 0.07	0.05 – 0.07	65-71
<b>Operating and maintaining register of lawyers when a party is restricted from self representation</b>	0.2	0.176	0.176	72-76
<b>Total (£m)</b>	1.96-2.75	<b>5.236 - 9.996</b>	<b>5.196-9.996</b>	

## **Costs to the Scottish Courts and Tribunals Service**

78. A number of the provisions in the Bill will have indirect costs to the Scottish Administration as they will have cost implications for the SCTS.

### *Duty on court to consider the best way of obtaining the views of a child*

79. Section 1 of the Bill places a duty on the court to consider the views of the child on how they wish to express their views. This aims to encourage the courts to use a variety of ways to obtain the views of the child. In 2018/19 there were 3,554 cases raised in the family courts that involved children.

80. The duty to consider the best way of obtaining a child's views has relatively modest cost implications. This Financial Memorandum costs it separately from the cost of actually obtaining the views. The Scottish Government considers that the duty might cost around £100 per case. On the basis that there are 3,554 cases a year, this would cost around £355,000 a year. This is assuming that in every case the court would need to establish how a child wishes to give their views. This figure may be lower as some cases involve very young children who are incapable of forming their views.

81. The Scottish Government would envisage that these costs are unlikely to commence prior to April 2023 when the register of CWRs is likely to be established.

### *Obtaining a child's views*

82. Different ways of communicating with children would cost different amounts. The Bill contains provisions which remove the presumption that a child aged 12 or over is mature enough to give their views. This will mean that younger children's views should be considered. In addition, the Bill also introduces a duty on the court to consider the best way to obtain the views of the child and seek the child's opinions on this subject if possible. These two provisions are likely to mean that more children's views are taken in different ways than currently.

83. These two provisions are likely to have an impact on the SCTS as it may lead to more judges and sheriffs speaking directly to children. In addition, the courts will need to consider the child's preferences on how they want to give their views. Engagement events with children and also the work done by Power Up/Power Down<sup>12</sup> suggests that children are keen to engage with the decision maker themselves.

84. Some judges and sheriffs already speak directly to children to establish their views on who they should live with or have contact with but the most common method is through completing a form (F9) or through a CWR.

85. Additional costs of a child's view being taken by CWRs are discussed in paragraphs 50 and 51 above. The Scottish Government does not expect there would be additional costs to the

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<sup>12</sup> <https://www.cypcs.org.uk/policy/past-work/power-uppower-down/>

public purse to more form F9s being issued to children as this is currently undertaken by the pursuer in cases under section 11 of the 1995 Act<sup>13</sup>.

86. Based on figures from the SCTS, the average cost of a sheriff obtaining the views of the child could be £875. This incorporates the sheriff’s time and also the time of a clerk of the court and a court officer who would be required to be present whilst the child was talking to the sheriff. A case may involve more than one child. Based on Office of National Statistics published figures for the average number of dependent children per family in 2017 of 1.75<sup>14</sup> the table below shows a range of estimated costs for this provision depending on the number of children’s views who are being heard.

Table 17: Courts obtaining views of the child

	<b>100 children’s views</b>	<b>200 children’s views</b>	<b>400 children’s views</b>
<b>Cost £m</b>	0.09	0.18	0.35

87. In addition to the judicial time required to speak to young people, sheriffs may also require training in communicating with children. It is not anticipated that the provisions of the Bill will give rise to any significant additional costs in respect of the delivery of associated judicial training.

88. The Scottish Government would envisage that these provisions would likely commence in April 2023 with the introduction of the register of CWRs.

*Explaining decisions to a child*

89. Section 15 of the Bill requires the court to explain any decisions that they make where the court considers it important and in the best interests of the child for them to have a decision explained. This will have an impact on the SCTS as judicial time will be required to provide an explanation of a decision to the child if they consider it in the best interests of the child concerned.

90. The cost of providing an explanation via a CWR is covered in paragraphs 42–45 of this Financial Memorandum.

91. In 2018/19 there were 2,639 cases disposed of in the sheriff courts in relation to parental responsibilities and rights. In 2018/19 there were also 15,649 hearings in family cases involving children (excluding adoption and permanence). Of the 15,649 there were 6,655 Child Welfare Hearings, 1,383 proofs called and 239 proofs proceeding. The Scottish Government assumes that feedback would be provided to a child as a result of each proof. Based on the assumption that the

<sup>13</sup> <http://www.scottishciviljusticecouncil.gov.uk/news/2019/04/02/views-of-the-child-in-family-and-civil-partnership-actions>

<sup>14</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/adhocs/008855familieswithdependentchildrenbynumberofchildrenuk1996to2017>

court’s decision would be explained by the court itself in 10% of cases and it would cost the court £875 to provide an explanation the cost would be £21k (£875 x 239 x 10%).

92. In addition, an explanation would also need to be provided after an important decision was made in a Child Welfare Hearing. The table below shows the estimated cost if an explanation was required to be provided in 25%, 50% and 75% of Child Welfare Hearings and this was done 10% of the time by the court itself.

Table 18: Courts providing an explanation on decisions

	Explanation in 25% of Child Welfare Hearings	Explanation in 50% of Child Welfare Hearings	Explanation in 75% of Child Welfare Hearings
Cost (£m)	0.15	0.29	0.59
Cost All proofs (£m)	0.02	0.02	0.02
Total cost (£m)	0.12	0.31	0.61

93. The total cost of providing an explanation of a decision to a child by the court has been estimated at between £0.17m and £0.61m. It is envisaged that the provisions in relation to providing an explanation of a decision to a child would only come into force once regulation of CWRs are in place. This would mean that costs would only commence in financial year 2023/2024.

94. There would be a cost implication to SCTS if a CWR is appointed to provide an explanation of a decision to a child. This cost would be for the court to provide information to the CWR in order for them to be able to explain a decision. Assuming a decision is explained once per case and assuming one hour for the sheriff to prepare the relevant information for the CWR, SCTS has estimated that there would be costs to it of £0.62m per year.

*Summary*

95. The Scottish Government has estimated the costs for SCTS to be as follows.

Table 19: Estimated cost for SCTS

	2023/24 £m	2024 onwards £M	Paragraph number
Duty on the court to consider the best way of obtaining the views of a child	0.36	0.36	79 - 81
Ensuring the views of younger children are heard	0.09-0.35	0.09 – 0.35	86
Providing an explanation of a decision to the child directly	0.12-0.61	0.12 – 0.61	91–93
Providing information to CWR to explain a decision to a child	0.62	0.62	94
Total (£m)	1.19-1.94	1.19- 1.94	

**COSTS ON LOCAL AUTHORITIES**

96. Section 14 of the Bill provides that if a local authority employee wishes to continue to act as a CWR then they would need to apply to be on the register of CWRs and meet the required eligibility criteria. This will have a cost saving of between £0.15m and £0.3m to local authorities. Local authorities would not be required to fund child welfare reports.

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

**Cost to Scottish Legal Aid Board (SLAB)**

97. Establishing a register of CWRs would reduce demands on the legal aid budget. This is because payment of Child Welfare Reports currently met by the legal aid budget will move to being paid directly by the Scottish Government or by a third party contracted to undertake the administration of CWRs.

*Clarifying that a person under the age of 16 may apply for, and be granted an order under section 11(2)(d) of the 1995 Act (a contact order)*

98. Section 11 of the Bill makes it clear that an order under section 11(2) of the 1995 Act is to be regarded as related to at least one of the matters mentioned in section 11(1). An order under section 11(2) includes, at (d) a “contact order” which regulates the arrangements for maintaining

personal relations between a child under 16 and any person with whom the child is not, or will not be, living.

99. This provision seeks to clarify, for the avoidance of doubt, that a person under the age of 16 can seek and obtain a contact order under section 11(2)(d) of the 1995 Act, despite the fact that, under section 11(2)(b) of the 1995 Act, a person under 16 cannot obtain an order granting them PRRs, unless the person is a parent of the child.

100. In its consultation response<sup>15</sup> SLAB noted that there might be small increases in the number of applications made for Legal Aid by a person including someone under the age of 16 who is seeking contact with a sibling.

101. SLAB have confirmed in its consultation response that it does not expect the cost for SLAB in this area to be significant due to applications for Legal Aid from siblings already being received and that this is unlikely to lead to a significant upsurge in requests. The table below shows projected cost implications based on 50 and 100 new cases based on an average cost of a SLAB case of £2,739. The Scottish Government would expect these costs to arise from financial year 2021/22.

Table 20: Cost to SLAB of clarification that a person under the age of 16 may apply for and be granted an order under section 11(2)(d) of the 1995 Act

	50 new cases	100 new cases
Cost (£m)	0.14	0.28

*Principal Reporter right of appeal in Children’s Hearings court cases*

102. Section 17 of the Bill gives the Principal Reporter in a Children’s Hearing the right of appeal against a sheriff’s decision in relation to deemed relevant person status. The number of cases where the Principal Reporter will exercise this new right of appeal will be low. In the last few years the numbers appealed to the higher courts by parties with rights of appeal against relevant person status have been fewer than five per year. It is unlikely that the Principal Reporter will intervene where parties themselves have not appealed except in exceptional cases. The Principal Reporter is more likely to exercise their powers to appeal to the Sheriff Appeal Court where costs are less. Appeals by the Principal Reporter to the Court of Session are likely to be rare.

103. For four appeals where four people per appeal are represented and funded by legal aid, using a current average case cost for higher court appeals of £3,600 per person this would have additional costs to SLAB of £57,600.

<sup>15</sup> [https://consult.gov.scot/family-law/children-scotland-act/consultation/published\\_select\\_respondent](https://consult.gov.scot/family-law/children-scotland-act/consultation/published_select_respondent)

## **Costs to contact centres**

104. Section 9 of the Bill will have cost implications for a number of organisations in relation to proposals to regulate child contact centres. There are currently 41 contact centres across Scotland which are affiliated to Relationships Scotland (RS)<sup>16</sup>. In addition, the Scottish Government is aware of three independent centres in Aberdeen<sup>17</sup>, Inverclyde<sup>18</sup> and Glasgow<sup>19</sup>.

105. The Bill includes provisions which give the Scottish Ministers the power to set minimum standards for contact centres by secondary legislation. Minimum standards would cover areas including handling complaints, training of staff and minimum standards of accommodation. There would be cost implications for the contact centres affiliated to Relationships Scotland and the three independent centres to meet the required minimum standards. The Scottish Government proposes to consult on the draft regulations in due course and the cost implications will be set out more fully in bringing forward the secondary legislation.

106. The regulation of contact centres will require secondary legislation to be in force. Therefore based on the timetable below the Scottish Government does not expect the costs for the contact centres to be evident until 2022/2023.

Table 21: Timings for regulation of child contact centres

Timing	Activity
Children (Scotland) Bill gains Royal Assent	Summer 2020
Preparation of secondary legislation	September – December 2020
Consultation on secondary legislation	January – March 2021
Analysis of consultation responses and revising secondary legislation	April – September 2021
Body appointed to oversee regulation of child contact centres	From April 2022
Set up time for body	April 2022 – April 2023
Regulation in force	April 2023

<sup>16</sup> <https://www.relationships-scotland.org.uk/>

<sup>17</sup> <https://www.vsa.org.uk/maisies/>

<sup>18</sup> <http://www.familycontact.org.uk/>

<sup>19</sup> <http://www.renfieldcontactcentre.co.uk/contact.html>

### *Complaints handling*

107. The Scottish Government does not expect that contact centres will incur expenditure as a result of regulations laying down provisions on handling complaints. Contact centres already have procedures in place to deal with complaints. Even if these procedures have to be updated as a consequence of the planned regulations, that could be done as part of the contact centre's routine revision work, given that centres will have notice of what is being proposed (as indicated above in paragraph 105, the Scottish Government plans to consult on draft regulations laying down the proposed standards).

108. The Scottish Government has also considered whether laying down provisions on handling complaints in regulations could lead to more complaints (and, potentially, increased costs) to contact centres. However, the Scottish Government do not consider that this will have a cost impact for contact centres as they already handle complaints. The cost implication will be more for the inspecting body.

### *Training*

109. The 41 contact centres that are affiliated to RS have approximately 180 members of staff. The Scottish Government understands that the independent centres have 20 staff in total. The Scottish Government acknowledges that contact centre staff already receive training and that training requirements would vary based on the roles undertaken by staff and the existing training they have completed. However, the Scottish Government considers that additional training may be required. Based on the assumption of 200 staff, taken from the number in each of the contact centres as specified in their latest annual reports, and staff requiring four days of training a year, at a cost per person per day of £400 for a training session (based on the average cost of a training course from speaking to key stakeholders) this additional cost is estimated at £0.32m. As noted above, the Scottish Government expects that this cost would commence in 2022/23 as centres aim to meet the training requirements. This cost would be a recurring cost as training would be ongoing to ensure that staff training remains current.

### *Meeting accommodation standards*

110. The accommodation used by contact centres varies. In some cases, bespoke centres are used. In other cases, the accommodation may be used as a contact centre for just a few hours a week and may be used for other purposes the rest of the week: for example, some contact centres use buildings associated with faith bodies. The Scottish Government is also aware that one of the independent centres uses a facility that is normally a nursery during the week.

111. As the accommodation varies, the costs associated with meeting minimum standards of accommodation laid down by regulations will vary. For some centres, the cost may be nil. For others, the cost may be considerable. The Scottish Government proposes to consult on draft regulations in due course and the cost implications will be set out more fully in bringing forward the secondary legislation.

112. This Financial Memorandum takes the approach that the average one-off cost per contact centre of meeting the new accommodation standards will be between £10,000 and £50,000 as some centres would require significant work and some would already meet the standards. As indicated above there are 44 contact centres in Scotland. The Scottish Government has therefore estimated

the costs of meeting accommodation standards to be between £0.44m and £2.2m. As noted above, the Scottish Government expects that this cost would be a one off cost falling in 2022/23 as centres adapt their accommodation to meet the required standards.

### *Conclusion*

113. The table below shows the costs the Scottish Government anticipates to fall to contact centres:

Table 22: Anticipated costs to contact centres

	2022/23	2023/24	Paragraph number
Meeting training requirements	0.32	0.32	109
Meeting accommodation standards	0.44 – 2.2	0	110–112
Total	0.76 – 2.52	0.32	

### **Cost to body appointed to oversee regulation of contact centres**

114. The Bill also gives the Scottish Ministers the power to appoint a body by secondary legislation to oversee the standards and report on the standards on a regular basis. There would be cost implications for the body appointed. One of the options being considered is for the Care Inspectorate to undertake this role. The Scottish Government has provided £56,000 in 2019/20 to the Care Inspectorate to undertake a feasibility study.

115. The Scottish Government’s intention is that the body appointed will be an existing body, rather than a new one. The tasks which the body will need to undertake include:

116. Laying down the process under which the body would oversee the standards, carry out inspections and publish reports. The inspections could either be routine or could be carried out if particularly significant complaints are received about a centre;

- registering contact centres;
- collecting fees from contact centres;
- recruiting staff to carry out the inspections, write reports and carry out other regulatory functions;
- handling complaints; and
- ensuring that necessary support functions (eg IT) are in place.

117. The cost of laying down some of the processes and functions above, for example, relating to inspections, or IT systems, may vary depending on the body that is appointed and its existing processes and functions. However, the Scottish Government does not consider that any potential variations would be significant for the purposes of this Financial Memorandum since the intention is to appoint an existing body rather than a new one. As noted above, the cost implications will be set out more fully in bringing forward the secondary legislation.

118. Once the system is fully up and running, the Scottish Government would expect there to be an initial inspection of each contact centre followed by a routine inspection every three years if a contact centre is performing satisfactorily. Children and parents use the facilities and so regular inspection is important but excessive inspection would be overly bureaucratic and could distract contact centre staff from providing their services to the public. Additional inspections could be carried out if particular concerns were raised about a contact centre. An inspection could take up to 10 days based on similar timescales published by Ofsted in relation to Local Authority Care Services standard inspections<sup>20</sup>:

- 4 days of notice and preparation;
- 2 days of inspection, including interviewing staff and clients (including children who are using the service); checking training records and inspecting the accommodation;
- 4 days to write the report.

119. On the basis that there are 44 contact centres in Scotland, that suggests 440 days taken up with routine inspection work in the first year of regulation. Thereafter routine inspections would take place every three years. In addition, there could be inspections following complaints. The Scottish Government has estimated that there may be 16 complaints received each year relating to contact centres. This is based on quarterly figures published by the Care Inspectorate for 2018/19<sup>21</sup> in relation to the number of complaints received as compared to the number of registered care services. However, not all complaints would lead to a further investigation by inspectors and so on this basis the Scottish Government estimates that five contact centre complaints a year may lead to a further visit, resulting in 50 additional inspection days a year.

120. 490 inspection days in the first year would require three FTE inspectors that year (on the basis that once weekends, holiday entitlement of 30 days and public holidays amounting to 10 days are taken into account, an inspector could be expected to work for 220 days a year). Since routine inspections would be carried out every three years after the initial inspection of each contact centre there would be 195 inspection days a year from the second year of regulation onwards (on the basis that two inspectors would have 145 inspection days each year plus 50 additional inspection days for complaints). This would mean two FTE inspectors would be sufficient from year two. On this basis one of three FTE inspectors in the first year could be recruited on a fixed term basis for that period only.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/793983/ILACS\\_framework\\_and\\_evaluation\\_criteria-120419.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793983/ILACS_framework_and_evaluation_criteria-120419.pdf)

<sup>21</sup> <http://www.careinspectorate.com/index.php/publications-statistics>

121. In terms of grades, inspectors could be graded at C1. The current average C1 salary including employers' National Insurance and Superannuation contributions is £73,281 per year.

122. The three inspectors in year one and two inspectors thereafter would need to be managed. This could be done by one person, in a grade immediately above theirs. This person could also, if necessary, attend any particularly difficult inspections or substitute for the usual inspector if the usual inspector should be ill or otherwise away unexpectedly. The current average C2 salary including employers' National Insurance and Superannuation contributions is £89,681.

123. In addition, the inspectors would need support. The likely need is for two support officers: one to support the inspectors directly and another to carry out other functions (eg collection of fees and publishing of reports). In terms of grades, support staff could be graded at B2. The current average B2 salary including employers' National Insurance and Superannuation contributions is £42,412.

124. These members of staff would also need to be accommodated. This could cost around £100,000 a year. Therefore, once the regulatory regime is up and running, expected costs for the inspection body per year are:

Table 23: Costs for inspection body

	Cost in 2022/23 (£m)	Cost 2023/24 and subsequent years (£m)
C2 senior inspector	0.09	0.09
C1 inspectors	0.20	0.15
B2 support staff	0.08	0.08
IT costs	0.02	0.01
Staff accommodation	0.1	0.1
Total	0.49	0.43

125. These costs could be met, at least in part, by charging registration and inspection fees to contact centres. However, the costs would still arise but they would just fall to contact centres rather than to the inspection body. Therefore, the Scottish Government has listed these costs as ongoing costs rather than set up costs.

126. In terms of set up costs, it seems reasonable to assume that the staff above would need to be in place in the year before the regime commences in order undertake some of the tasks set out in paragraph 116. For example, in the year before regulation the C2 would be needed to:

- recruit the C1 inspectors;
- write policies; and
- ensure necessary support functions are in place.

127. It is assumed that the staff would be housed within the existing accommodation of the organisation appointed to oversee the contact centre standards. However, it is envisaged that the new staff would require access to an IT system. The outline costs in Table 23 have been estimated on the basis of a complete installation of SCOTS into a non- SCOTS building as well as hardware and software costs.

128. On this basis the Scottish Government considers that there would be set up costs in the year before regulation of £0.49m, followed by ongoing costs of £0.43m.

129. The Scottish Government expects the regulation of child contact centres to come into force in 2023/24.

### **Costs to Scottish Children’s Reporters Administration**

130. Section 17 of the Bill gives the Principal Reporter in a Children’s Hearing the right of appeal against a sheriff’s decision in relation to deemed relevant person status. The number of cases where the Principal Reporter will exercise this new right of appeal will be low. In the last few years the numbers appealed to the higher courts by parties with rights of appeal against relevant person status have been fewer than five per year. It is unlikely that the Principal Reporter will intervene where parties themselves have not appealed except in exceptional cases. The Principal Reporter is more likely to exercise their powers to appeal to the Sheriff Appeal Court where costs are less. Appeals by the Principal Reporter to the Court of Session are likely to be rare. Based on recent cases dealt with by SCRA, costs are expected to be between £5k and £100k, as per the table below, to be met within the current Scottish Children’s Reporters Administration budget and normal exceptional cases protocol. The amendments in the Bill to the effect that the appeal route at first instance will be the Sheriff Appeal Court will keep costs at the lower end of £5k per case except in very rare cases where leave to appeal to the Court of Session is granted.

Table 24: Costs to Scottish Children’s Reporters Administration

Number of cases per year	Costs of Appeal to Sheriff Appeal Court	Costs of Appeal to Court of Session
1	£5k	£20k
2	£10k	£40k
5	£25k	£100k

## TOTAL COSTS

131. The tables below provide details of total cost implications for the Bill.

Table 24: Total set up costs

	2022/23	2023/24
Direct set up costs to Scottish Government (£m)	1.96 – 2.75	0.04
Set up costs to SCTS (£m)	0	0
Set up costs to SLAB (£m)	0	0
Set up costs to contact centres (£m)	0.76 – 2.52	0
Set up costs to body appointed to oversee regulation of contact centres (£m)	0.49	0
Set up cost to Scottish Children’s Reporters Administration (£m)	0	0
Total set up costs	3.21 -5.76	0.04

Table 25: Total ongoing costs

	2021/22	2022/23	2023/24	2024 onwards
Direct ongoing costs to Scottish Government (£m)	0	0	5.236 – 9.996	5.196 – 9.996
Ongoing costs to SCTS (£m)	0	0	1.19 -1.94	1.19 – 1.94
Ongoing costs to SLAB (£m)	0.2-0.36	0.2-0.36	0.2 – 0.36	0.2-0.36

*This document relates to the Children (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 2 September 2019*

Ongoing costs to contact centres (£m)	0	0	0.32	0.32
Ongoing costs to body appointed to oversee regulation of contact centres (£m)	0	0	0.49	0.43
Ongoing costs to Scottish Children's Reporters Administration (£m)	0.01 – 0.1	0.01 – 0.1	0.01 – 0.1	0.01 – 0.1
Total ongoing costs	0.21-0.46	0.21 -0.46	7.446 – 13.206	7.34613.146

**Children (Scotland) Bill provisions with no cost implications**

<b>Provision</b>	<b>Reason for no cost implication</b>
Extension to sheriff court of enforcement powers under Family Law Act 1986	There are very few orders currently registered in the Court of Session (24 in 2017). In addition, as registration and enforcement are usually done simultaneously the Scottish Government is expecting no significant savings or costs.
Conferral of parental responsibilities and rights on unmarried fathers and second female parents who jointly register the birth of a child, or register as parents, in other jurisdictions	The Scottish Government is not expecting this to have cost implications as it does not introduce a new procedure for obtaining parental responsibilities and rights.
Authorising the use of special measures for vulnerable parties in proceedings such as Child Welfare Hearings under section 11 of the 1995 Act. This includes, screens, supporters and giving evidence via live video link.	The courts should already have facilities such as screens and live video link available for use in criminal cases.
Requirement to have regard to the risk to the welfare of the child posed by delay in court proceedings.	This provision emphasises that cases should be dealt with expeditiously. In itself the Scottish Government does not envisage this provision to have any savings or costs. Work on enhanced case management being undertaken by the Family Law Committee of the Scottish Civil Justice Council could lead to savings. However this detailed work is not covered by this provision.
Introduction of a checklist of factors for the court to consider when dealing with a case under section 11 of the 1995 Act	This provision adds a short list of areas that the court should consider when making an order under section 11 of the 1995 Act, though in many cases they will already be considered where relevant. It is not considered that it will materially increase costs or savings.
Introducing duties on local authorities in relation to promoting sibling relations	Local authorities are already bound to implement their duties under Article 8 of the European Convention of Human Rights to protect the rights of children to family and private life which would include promoting contact. There is no new burden created by these duties but the provisions give greater prominence of the requirement to do so. Sharing of best practice of how best to implement these duties will continue to be explored with assistance from the Stand up for

	Siblings Partners and the Independent Care Review.
Ensuring the views of children are heard in Children's Hearings and adoption and permanence cases.	Best practice is already for children in the hearings system to have their views captured whatever their age. The implementation of the advocacy service (being carried out by making regulations under section 122 of the Children's Hearings (Scotland) Act 2011) will also support children to give their views at no extra cost for this Bill. Therefore, the Scottish Government considers that the provisions in the Bill on the views of the child being heard in the Children's Hearings do not give rise to additional costs.



*This document relates to the Children (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 2 September 2019*

# **CHILDREN (SCOTLAND) BILL**

## **FINANCIAL MEMORANDUM**

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