We thank you for giving the Scottish Courts and Tribunals Service (“the SCTS”) the opportunity to respond to the Finance and Constitution Committee’s call for written submissions on the Financial Memorandum (“the FM”) to the Age of Criminal Responsibility (Scotland) Bill (“the Bill”).

The response is submitted by the SCTS acting in its role to provide efficient and effective administration to the courts and does not include the views of the Judiciary.

**Costs to the SCTS under Parts 2 and 4 of the Bill**

The costs provided by the SCTS that are set out at paragraph 22 of the FM were given to the Bill team on the basis that the SCTS would receive, at a later date, the full detail of the Bill in order to properly assess its financial impact.

The general estimation provided by the SCTS was based on an uncontested civil application and was accompanied with the caveat that no account had been taken of the increased costs to the SCTS should such applications become contested. This is reflected in the footnote to page 5 of the FM. SCTS were not given the opportunity to provide cost estimates for the new appeal to the sheriff under section 15 of the Bill or appeals under Part 4 of the Bill.

As the FM indicates, it is difficult to predict the potential effects of introducing formal judicial oversight under the provisions of the Bill. The Scottish Government has assumed that any additional costs arising will be subsumed within existing SCTS budgets. This was not raised with the SCTS in our discussion with the Scottish Government.

Whilst it is anticipated that volumes of applications and appeals will be low, the SCTS expresses concern that an appropriate opportunity was not given to scrutinise the provisions of the Bill, in full, prior to its introduction to the Scottish Parliament on 13 March 2018. Although an opportunity was given to provide the limited cost information referred to above, this would not in our view constitute a full and proper consultation of the provisions nor did it provide an opportunity to comment on the financial and other assumptions made in the FM.

That being said, given that both applications and appeals (under Parts 2 and 4 of the Bill) are civil proceedings, the SCTS are of the view that the Scottish Government’s policy of full cost recovery (including judicial costs) will apply and on this basis any additional costs to the SCTS will be met through existing or amended court fees.
**Effect of the removal of the offence grounds**

As a result of the provisions of the Bill, it may be possible that offence based reports that the Children’s Reporter does not currently pursue due to lack of corroboration, may instead be referred by the Children’s Reporter on care and protection or welfare grounds cases. This is referred to in the Policy Memorandum and the lower standard of proof would apply to these cases.

The SCTS is not placed to provide statistical information on the number of offence related cases which were not referred due to a lack of corroboration. However we would note that any increase in the number of referrals will have potential cost implications for the SCTS. These would arise from any increase in applications and appeals to the sheriff, for example those under sections 93, 94 and 154 of the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”). The Scottish Government policy of full cost recovery would not apply in relation to these proceedings on the basis that applications and appeals under the 2011 Act are exempt under the current Sheriff Court Fees Order.

We hope this is of assistance.

Yours faithfully

Mark Kubeczka
Legislation Implementation Team
Scottish Courts and Tribunals Service

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