

This document relates to the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill (SP Bill 34) as introduced in the Scottish Parliament on 12 June 2018

Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill

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 Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill, introduced in the Scottish Parliament on 12 June 2018.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 34-EN);
- a Policy Memorandum (SP Bill 34-PM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 34-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 Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill ("the Bill") will improve how the criminal justice system responds to children and other vulnerable witnesses. The Bill amends the Criminal Procedure

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(Scotland) Act 1995 (“the 1995 Act”) by creating a new rule¹ in favour of children under 18 to have their evidence pre-recorded in advance of trial in the most serious of cases (solemn cases heard in the High Court or Sheriff Court). A secondary legislation power is also included in the Bill to extend the new rule to categories of adult “deemed vulnerable witnesses”² in solemn cases.

5. The Bill also provides flexibility for a separate ground rules hearing to be held, if necessary, prior to evidence being taken by way of commissioner. This applies to every commission and not just those commissions where the new rule in favour of children under 18 applies. The policy intention is that a hearing to consider ground rules is to take place prior to every commission, however there is flexibility in the Bill for this to be conjoined with any other hearing or diet if easier and more efficient to do so. Currently preliminary hearings are in effect acting as ground rules hearings and the expectation is that they will continue to do so.

6. The Bill also makes various other amendments to the 1995 Act to allow commissions to be held prior to service of the indictment (if appropriate to do so); makes provision for the same judge who presides over the ground rules hearing to preside over the commission, where reasonably practicable; and makes provision for a new intimation process for standard special measures for child and deemed vulnerable witnesses.

7. The financial impacts of the Bill arise from the creation of the new rule in favour of pre-recording, the ground rules hearing and the new simplified intimation process.

Current use of evidence by commissioner

8. To assist in the preparation of this financial memorandum, costs and case volume data were provided by the Scottish Courts and Tribunals

¹ In the Scottish Government consultation on Pre-Recording Evidence of Child and Other Vulnerable Witnesses, this new rule was referred to as a “presumption in law” however, henceforth references will be to “the new rule”.

² “Deemed vulnerable witnesses” means a vulnerable witness as defined in section 271(1)(c) of the Criminal Procedure (Scotland) Act 1995.

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Service (SCTS), Crown Office and Procurator Fiscal Service (COPFS) and the Scottish Legal Aid Board (SLAB).

9. In assessing the direct impact of the creation of the new rule in favour of children under 18, it is important to bear in mind that evidence by commissioner is not a new special measure. Evidence taken by way of commissioner can and does already happen in some criminal cases, although at present the numbers are fairly low. Data provided by SCTS illustrates the number of child witnesses who have attended commission hearings in the High Court during 2016 and 2017. Whilst data is not readily available on the corresponding number of commission hearings in Sheriff and Jury Court cases, information supplied by SCTS and COPFS suggests a similar level of hearings taking place to those evidenced in the High Court. Table 1 below therefore provides a breakdown of the actual annual figures collated for the High Court alongside estimated commission numbers for Sheriff and Jury cases.

Table 1 – Number of evidence by commissioner hearings for child witnesses

Commissions	2016	2017	2018 (Forecasted*)
High Court	17	17	60
Sheriff Court (estimated)	17	17	60
Totals	34	34	120

*Based on the anticipated increase in applications granted following implementation of the revised Practice Note in May 2017 (see paragraph 10 below).

Revised practice note for cases in the High Court

10. As the number of commissions was very low, to encourage greater use of the special measure of evidence by a commissioner, a revised Practice Note was issued in May 2017.³ The Practice Note provides extensive new guidelines for the process of “taking evidence by a

³ High Court of Justiciary Practice Note No.1 of 2017: Taking of Evidence of a Vulnerable Witness by a Commissioner, available at <https://www.scotcourts.gov.uk/rules-and-practice/practice-notes/criminal-courts-practice-notes-and-directions>.

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Commissioner” which will help reduce further the need for vulnerable witnesses to give evidence in person in court.

11. Research by SCTS and COPFS indicates the positive impact of the Practice Note to date. In the first quarter of the 2018 calendar year there were 29 applications for evidence by commissioner in the High Court. This can be compared to 30 applications made in the full 2017 calendar year, covering the pre-implementation and initial stages of the Practice Note. As evidenced by applications to date in 2018, the number of commissions is expected to increase as the Practice Note becomes fully embedded in processes and preparations commence for the forthcoming new rule. COPFS estimate a total number of 98 applications for evidence by commissioner for child witnesses in the High Court in the 2018 calendar year if applications continue at the increased rate evidenced in early 2018. In acknowledging the number of applications is not fully representative of those actually giving evidence, the number of commission hearings expected to take place in 2018 in the High Court is estimated at 60. This is based on around 60% of applications resulting in commission hearings as experienced in the 2017 financial year. Although there is no equivalent to the Practice Note in the Sheriff Court, a similar increase in applications and commissions is anticipated in 2018 as commission hearings become more of the norm.

Projected impact of the Bill

New rule requiring pre-recording

12. The number of commissions is expected to increase further as a result of the creation of the new rule as the intention is that all children under 18 in the most serious cases will pre-record their evidence in advance of trial. In order to estimate how many potential child witnesses the new rule may apply to, information provided by COPFS shows the number of witnesses under 18 who are cited on an annual basis to the High Court and Sheriff Court in respect of solemn cases involving charges that will be covered under the new rule. An average of 767 witnesses have been cited on an annual basis over the past five years, comprising 359 in the High Court and 408 in the Sheriff Court.

Table 2 – Number of witness citations for children under 18 to which the new rule applies in relation to solemn cases

	2012/13	2013/14	2014/15	2015/16	2016/17	Average
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High Court Citations	373	363	353	312	394	359
Sheriff Court Citations	432	421	428	392	372	408
Total Citations	805	784	781	704	766	767

13. It is important to note that in the period 2012/13 to 2016/17, prior to the implementation of the revised Practice Note, child witnesses were predominantly required to give their evidence in person during the criminal trial. During this period the number of witnesses who went on to give evidence was significantly less than those cited. As Lady Dorrian pointed out in her report:

“The reasons why cited witnesses do not always go on to give evidence at trial are many and varied. The case may resolve early by means of a guilty plea or desertion of the case by the Crown, evidence may be agreed or it may become apparent that the witness’s evidence is not required to prove the case. At the point at which an application for the taking of evidence by commissioner is granted the prosecutor will be expecting the case to proceed to trial and the evidence of the cited witnesses to be required to prove the case. In some instances it will become clear during the course of case preparation that the evidence of a cited witness is not required. Where this becomes clear early enough in the case preparation process the commission for which an application has been granted need not take place. Where it does not become clear until close to the point of trial it is likely that the witness’s evidence will already have been taken by commissioner. It can be assumed, therefore, that the number of commissions with child witnesses each year will be lower than the total number of granted applications”.⁴

⁴ SCTS, Evidence and Procedure Review Child and Vulnerable Witnesses Project Pre-Recorded Further Evidence Work-stream: Project Report (September 2017), page 53.

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Therefore it is anticipated that the number of commissions with child witnesses each year will be lower than the number of citations as outlined in Table 2 above.

14. It is very difficult to know the numbers of children who will actually be required to give evidence in any particular case and thus the number of commissions that will take place due to this information not being recorded on a routine basis. However, as part of the Pre-Recorded Further Evidence Work-stream Group of the Evidence and Procedure Review Child and Vulnerable Witnesses Project, chaired by Lady Dorrian, a data collection exercise indicated that in any 12 month period in the region of 100 child witnesses below the age of 18 give evidence in trials being heard in the High Court.⁵ This represents approximately 30% of the number of children cited on an annual basis. Whilst this information is not sufficiently robust to provide an accurate assessment of how many children will, in future, have their evidence pre-recorded in advance of trial, it does provide an estimate of the average minimum numbers expected to be impacted by the new rule. The new rule will ensure that those previously giving evidence at trial, estimated at 215 for both courts based on around 30% of all those cited, will now have their evidence pre-recorded in advance of trial. This represents an anticipated additional 95 commission hearings, as illustrated in Table 3, above the 120 projected hearings taking place in 2018 following implementation of the revised Practice Note. However, it is important to note that the data collection exercise only provides an estimate of how many children may or may not give evidence at the actual trial. And as recent figures indicate at paragraph 11, the number of applications for evidence by commissioner (which occurs in advance of the trial) is steadily increasing.

Table 3 – Estimated minimum number of commission hearings following implementation of the new rule (children previously providing evidence at trial)

	Average citations issued (2013-17)	Minimum forecasted commission hearings (those	Estimated net increase in commission hearings**

⁵ SCTS, Evidence and Procedure Review Child and Vulnerable Witnesses Project Pre-Recorded Further Evidence Work-stream: Project Report (September 2017), para 26.

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		children previously providing evidence at trial)*	
High Court	359	100	40
Sheriff Court	408	115	55
Total	767	215	95

*Represents around 30% of all citations based on evidence and procedure review data gathering exercise.

**Difference between baseline estimate and projected number of commissions following practice note implementation.

15. As commission hearings will be recorded in advance of trial, it is likely that the total number of children required to give evidence will increase beyond the 215 currently required to give evidence at trial. It is difficult to determine the precise impact of commissions occurring in advance of trial, and therefore earlier in the context of overall court proceedings, as it will be based on the individual merits of each case and the full impact, including costs, cannot be precisely estimated until the new rule and associated procedures are fully embedded. On this basis, the summary costs in Table 12 set out a baseline cost estimate, reflecting the 215 estimated children currently providing evidence at trial and 30% of all children cited, and a range of cost estimates if the number of children providing evidence were to increase to 50%, 75% or 100% of all child witness citations issued. For the reasons outlined in paragraph 13 above, it is extremely unlikely that all children cited will be required to provide evidence by commissioner. However, the 100% range is provided for illustrative purposes as the absolute maximum number of commissions that could be undertaken in relation to children under 18 based on existing case levels.

Ground Rules Hearings in the High Court and Sheriff Court

16. The Bill provides flexibility for a separate ground rules hearing to be held in every case where there is to be a commission. However, to allow as much flexibility as possible, the Bill also provides that a ground rules hearing can be conjoined with another hearing when easier and more efficient to do so. As highlighted in paragraph 5, currently preliminary hearings are effectively acting as ground rules hearings and this is expected to continue. It is therefore anticipated that a separate hearing will

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not be required in the vast majority of cases as any issues to be considered (as set out in the revised Practice Note⁶) can be dealt with effectively at the preliminary hearing. To allow for proper consideration of all the ground rules issues it is anticipated that preliminary hearings will be longer in duration for cases involving commissions. The precise time required will be dependent on the individual case and the particular issues being considered. However, COPFS and SCTS estimate that on average the duration could increase by an additional one hour.

17. The ground rules hearing applies to all cases and not just those to which the new rule will apply. The number of vulnerable adults who give evidence by way of commission is fairly low. In 2016 there were five commissions and in 2017 there were 12 commissions for adult witnesses. As a result, any anticipated costs arising from the primary legislation in respect of adult cases is expected to be minimal. For child cases, as the vast majority of cases are not anticipated to require a separate hearing, future costs are estimated on the basis of the cost of extending preliminary hearings by one hour for the 95 additional commission hearings expected to take place under the new rule.

New simplified notification process for Standard Special Measure notices

18. The Bill also provides for a new simplified process for dealing with standard special measures notices for children and deemed vulnerable witnesses. Currently, the 1995 Act requires written “vulnerable witnesses notices” to be lodged with the court in all cases. These are then placed before a Judge, Sheriff or Justice of the Peace. However, the current provisions provide that no objection can be made by parties and that the court has to make the relevant order, therefore there is no requirement for the notices to be the subject of any judicial oversight. The current 1995 Act provisions do not allow objections to be lodged by other parties to the proceedings and require the standard special measures requested to be granted. There is therefore no obvious need for these notices to be subject to judicial oversight and the new process contained in the Bill removes this.

⁶ High Court of Justiciary Practice Note No.1 of 2017: Taking of Evidence of a Vulnerable Witness by a Commissioner, available at <https://www.scotcourts.gov.uk/rules-and-practice/practice-notes/criminal-courts-practice-notes-and-directions>.

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Similarly, there is no proposal to change the process in relation to vulnerable witnesses who are considered vulnerable for one of the reasons set out in sections 271(1)(b) and 271(1)(d) of the 1995 Act. Based on statistical analysis conducted by SCTS and COPFS, on average approximately 18,000 child and deemed vulnerable witness notices/applications are processed each year, of which 70-95% are estimated to relate to witnesses seeking standard special measures only. On this basis the memorandum sets out the likely savings arising from 15,000 applications, representing 85% of all notices and applications, falling into the new simplified process.

Costs on the Scottish administration Scottish Courts and Tribunals Service (SCTS)

19. There will be additional costs on SCTS as a result of the creation of the new rule in favour of children under 18 as this will increase the number of commissions. There will also be additional costs arising from the provision in respect of a ground rules hearing. However, SCTS also anticipate savings arising from the new simplified notification process.

New rule requiring pre-recording

20. A commissioner can be either a High Court Judge or a Sheriff (depending on the forum in which the case is heard). Other SCTS costs include court staff time in support of the commission. SCTS has provided indicative costs per commission hearing based on the relevant personnel involved and assuming an average hearing duration of half a day. As commissions become more of the norm it is likely that commissions will be short and more focussed with the current estimate therefore reflecting the maximum expected cost per commission. Based on the anticipated baseline increase in commission hearings in both the High Court and Sheriff Court, and applying the average cost per case, SCTS are expected to incur an additional cost of £68,000 as illustrated in Table 4 below.

Table 4 - Estimated costs to SCTS as a result of the new rule

	Cost per commission*	Estimated net increase in commission hearings**	Anticipated cost
High Court	£823	40	£33,000

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Sheriff Court	£640	55	£35,000
Total	£1,463	95	£68,000

*Based on duration of half a day and rates of pay of the personnel involved

**As calculated in Table 3

Ground Rules Hearings

21. Given that the issues the ground rules hearing is to address will continue, in most cases, to be covered by the extended duration of a preliminary hearing (or equivalent) by up to one hour, the additional cost incurred by SCTS is expected to be minimal. Based on hourly rates of the relevant personnel involved, as provided by SCTS, and the anticipated baseline number of hearings impacted by the provision the annual cost impact on SCTS is expected to be around £14,000 as detailed in Table 5.

Table 5 – Estimated cost to SCTS of Ground Rules Hearings

	Cost per Ground Rules Hearing*	No of Extended Hearings	Anticipated Costs
High Court	£178	40	£7,000
Sheriff Court	£132	55	£7,000
Total	£310	95	£14,000

*Represents cost of extending preliminary hearing or first diet by one hour

Simplified Notification Process

22. As discussed at paragraph 18, the Bill also provides for a new simplified process for dealing with standard special measure notices for children and deemed vulnerable witnesses. SCTS anticipate that they will generate savings as a result of this proposed simplified process. These savings are largely because there will no longer be judicial consideration as currently required by the Act, or the administrative processes in place to support that consideration. Based on the anticipated time saving, SCTS estimate that between the existing and revised simplified processes an overall annual saving of approximately £214,000 is anticipated, as illustrated in Table 6.

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Table 6 – Estimated savings to SCTS of new simplified process

	Estimated No of applications	Saving per application*	Estimated total saving
High Court	700	£20.00	£14,000
Sheriff Court	14,300	£14.00	£200,000
Total	15,000		£214,000

*Includes savings in judicial and administrative costs

Crown Office and Procurator Fiscal Service (COPFS)

23. COPFS anticipate that the Bill will result in additional costs to them primarily in terms of personnel and recording costs associated with taking evidence by commissioner.

New rule requiring pre-recording

24. Table 7 below provides a breakdown of the additional estimated baseline costs to COPFS as a result of the creation of the new rule in favour of children under 18, which are anticipated to total £65,000 for personnel and £148,000 for recording. It must be noted that the recording costs are based on the existing cost of recording and editing the hearing, with a review currently being completed by SCTS to ensure best value is maintained in light of the number of commissions. Therefore the illustrated recording costs represent the anticipated maximum costs likely to be incurred per commission.

Table 7 – Estimated costs to COPFS as a result of the new rule

	Cost per commission*	Estimated net increase in commission hearings**	Anticipated cost
Personnel			
High Court	£893	40	£36,000
Sheriff Court	£523	55	£29,000
Personnel Total	£1,416		£65,000

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Recording costs	£1,560	95	£148,000
Total	£2,976		£213,000

*Based on duration of half a day and rates of pay of the personnel involved

**As calculated in Table 3

Ground Rules Hearings

25. As mentioned at paragraph 16, it is expected that any ground rules issues will be considered as part of another hearing – most likely the preliminary hearing. As a result, preliminary hearings may last longer in duration and include additional preparation time. Although it is difficult to be exact in terms of how much time is spent, as each case will require differing degrees of preparation, COPFS estimate that on average four hours additional preparation time is required. The preparation time includes, but is not limited to, correcting and finalising applications, liaison with defence agents and preparation of questions. Therefore, estimated costs have been based on additional preparation time of four hours and an expected extension of the existing preliminary hearing by up to one hour.

26. The estimated costs associated with the extension of the preliminary hearing (or equivalent) to COPFS, as outlined in Table 8, total £23,000 based on the hourly rates of the COPFS personnel involved.

Table 8 – Estimated cost to COPFS of Ground Rules Hearings

	Cost per Ground Rules Hearing*	No of Extended Hearings	Anticipated Costs
High Court	£340	40	£14,000
Sheriff Court	£155	55	£9,000
Total	£291	95	£23,000

* Represents cost of preparation time of four hours and extending preliminary hearing or first diet by one hour

Simplified notification process

27. As discussed at paragraph 18, the Bill also provides for a new simplified process for dealing with standard special measure notices for children and deemed vulnerable witnesses. COPFS anticipate that they will generate savings as a result of this proposed simplified process. These savings largely reflect staff time spent on drafting and issuing around

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15,000 notices and applications which will now be subject to the simplified procedure. Based on the cost saving per application, as provided by COPFS, between the existing and revised simplified processes an overall saving of approximately £69,000 is anticipated, as illustrated in Table 9.

Table 9 – Estimated savings to COPFS of new simplified process

	Estimated No of applications	Estimated saving per application*	Estimated total saving
High Court	700	£17	£12,000
Sheriff Court	14,300	£4	£57,000
Total	15,000		£69,000

*Includes savings in staff time and application postage costs

28. A manual count by COPFS indicates that around 350 notices seeking only standard special measures in relation to deemed vulnerable witnesses were lodged in the High Court in a six month period between 1 July 2017 and 31 December 2017. On the basis that 700 notices are lodged in any given year, this will result in a saving of £12,000. On the basis that an average of 14,300 applications in the Sheriff Court relate to those seeking only standard special measures this would result in a saving of £57,000.

Scottish Prison Service

29. The Scottish Prison Service (SPS) anticipate that any costs incurred by them for the estimated additional 95 baseline commissions in respect of the new rule in favour of children under 18 will be minimal. Whilst each journey may not necessarily result in an additional cost, with transportation from prisons to courts and vice versa already taking place almost daily, the SPS has provided an average travel cost per commission of around £200. On this basis, the total cost for the estimated 95 additional commissions totals £19,000.

Costs on local authorities

30. It is not anticipated that there will be any new costs falling to local authorities as a result of the provisions in the Bill.

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Costs on other bodies, individuals and businesses Scottish Legal Aid Board (SLAB)

31. SLAB anticipate that there will be additional costs as a result of the creation of the new rule and from the provision in respect of a ground rules hearing.

New rule requiring pre-recording

32. To produce estimates of anticipated costs, the tables below set out case costs depending on the personnel involved and whether it is heard in the High Court or Sheriff Court. It should be noted that the costs outlined in the table below are at the maximum range per commission as they reflect senior counsel, junior counsel and a solicitor acting in every commission and ground rules hearing. Costs would therefore be lower if, for example, only junior counsel and a solicitor were involved.

Table 10 – Estimated costs to SLAB as a result of the new rule

	Cost per Commission*	Estimated net increase in commission hearings**	Anticipated cost
High Court	£2,036	40	£82,000
Sheriff Court	£1,713	55	£94,000
Total	£3,749	95	£176,000

*Based on duration of half a day and rates of pay of the personnel involved

**As calculated in Table 3

Ground Rules Hearings

33. In respect of ground rules hearings, as the expectation is that these will continue to be covered by either the preliminary hearing or another suitable hearing, there are only minimal additional costs anticipated to be incurred by SLAB. The total costs of around £6,000, as included in Table 11, reflect the additional cost of solicitor time with no additional cost anticipated in relation to counsel, who are paid a standard rate for a preliminary hearing regardless of the length of time the hearing takes.

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Table 11 – Estimated Costs to SLAB of Ground Rules Hearings

	Cost per Ground Rules Hearing*	No of Extended Hearings	Anticipated Costs
High Court	£59	40	£2,500
Sheriff Court	£59	55	£3,500
Total	£118	95	£6,000

* Represents cost of extending preliminary hearing or first diet by one hour based on solicitor rates of pay

Police Scotland

34. It is not anticipated that there will be any new costs falling to Police Scotland as a result of the provisions in the Bill.

Summary of costs relating to the Bill

35. The estimated financial impact of the Bill's provisions in respect of the new rule in favour of pre-recording the evidence of children under 18 in the most serious cases, the ground rules hearing and the new simplified notification process is summarised in tables 12 and 13 below. The annual recurring costs are estimated to total between £519,000 (based on the existing 215 children estimated to provide evidence at trial) and £3,551,000 (based on an absolute maximum where all children cited are required to provide evidence via commission). As commissions are already taking place, no additional set up costs are anticipated from implementation of the new rule in favour of children under 18. The overall anticipated costs of the bill are expected to be partially offset by anticipated savings arising from the new simplified notification process totalling £283,000.

Table 12 – Estimated annual recurring costs associated with the Bill

COSTS FALLING ON THE SCOTTISH COURTS AND TRIBUNALS SERVICE				
Provision	Baseline cost estimate (30% of all children)	Increase to 50% of those cited (264)	Increase to 75% of those cited (455)	Increase to 100% of those cited

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	cited) (95 commissio ns)	commissio ns)	commissio ns)	
New Rule (paragraph 20 and Table 4)	£68,000	£190,000	£330,000	£469,000
Extended Preliminary Hearing (paragraph 21 and Table 5)	£14,000	£40,000	£70,000	£99,000
Sub Total – SCTS	£82,000	£230,000	£400,000	£568,000
COSTS FALLING ON THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE				
Provision	Baseline cost estimate (30% of all children cited)	Increase to 50% of those cited	Increase to 75% of those cited	Increase to 100% of those cited
New Rule (paragraph 24 and Table 7)	£213,000	£593,000	£1,026,000	£1,458,000
Extended Preliminary Hearing (paragraphs 25-26 and Table 8)	£23,000	£63,000	£109,000	£156,000
Sub Total – COPFS	£236,000	£656,000	£1,135,000	£1,614,000
COSTS FALLING ON THE SCOTTISH LEGAL AID BOARD				

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Provision	Baseline cost estimate (30% of all children cited)	Increase to 50% of those cited	Increase to 75% of those cited	Increase to 100% of those cited
New Rule (paragraph 32 and Table 10)	£176,000	£490,000	£847,000	£1,205,000
Extended Preliminary Hearing (paragraph 33 and Table 11)	£6,000	£16,000	£27,000	£35,000
Sub Total – SLAB	£182,000	£506,000	£874,000	£1,240,000
COSTS FALLING ON THE SPS				
Provision	Baseline cost estimate (30% of all children cited)	Increase to 50% of those cited	Increase to 75% of those cited	Increase to 100% of those cited
New Rule (paragraph 29)	£19,000	£53,000	£91,000	£129,000
Sub Total – SPS	£19,000	£53,000	£91,000	£129,000
ESTIMATED TOTAL ANNUAL RECURRING COSTS				
Estimated Total	£519,000	£1,445,000	£2,500,000	£3,551,000

Table 13 – Estimated annual savings of the new simplified notification process

ESTIMATED SAVINGS OF NEW SIMPLIFIED NOTIFICATION PROCESS

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SCTS	£214,000
COPFS	£69,000
Total Savings	£283,000

36. The Bill provides that commencement of the relevant provisions may be phased over a period of time, on the basis of age, witness profile or level of court, to ensure quality and consistency of practice. Decisions for commencement are for the Scottish Ministers. However, for illustrative purposes, the memorandum provides an indication of potential timescales over which costs are expected to arise, based on initial implementation within the High Court, building on the success of the revised Practice Note, and subsequent roll out to Sheriff Court proceedings. Given the level of estimated additional commissions, and the commitment to removing children from the court room, commencement on the basis of other categories such as age is unlikely to have a significant impact on the anticipated cost profile.

Table 14 – Estimated total annual recurring costs and savings

Estimated recurring costs of baseline cost of estimate of 30% of all children cited	
Year 1 High Court Only	£245,000
Year 2 High Court and Sheriff Court	£519,000
Estimated savings of simplified process	
Year 1 High Court	£26,000
Year 2 High Court and Sheriff Court	£283,000
Net Cost of Bill	
Year 1 High Court	£219,000
Year 2 High Court and Sheriff Court	£236,000

Adult deemed vulnerable witnesses

37. The Bill provides a regulation making power for the Scottish Ministers. This power enables the new rule to be extended to categories of adult “deemed vulnerable witnesses” as defined by section 271(1)(c) of the

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1995 Act. Regulations may apply the new rule to all adult deemed vulnerable witnesses or to subcategories of adult deemed vulnerable witnesses in solemn cases only. The regulations may make different provision for different purposes, including for different courts or descriptions of courts or different descriptions of deemed vulnerable witnesses. Any regulations made under this section are subject to the affirmative procedure in the Scottish Parliament. The potential cost impact associated with commencement and implementation of the secondary legislation power will very much be dependent on how that power is commenced and what provisions are included. The financial costs, and any savings, associated with the extension of pre-recording to vulnerable adult groups will therefore need to be clear in the Policy Note accompanying the necessary regulations approving any extension of the new rule.

38. Data collected by COPFS captures the total number of all adult witness citations in any given year, however no data is currently gathered on how many of these citations relate to “deemed vulnerable adult witnesses”. In the absence of numbers of citations, COPFS has identified the number of adult witness special measure requests as the best representation of deemed vulnerable adults who may be covered by any extension to the new rule. In the region of 1,100 adult special measure request applications in the High Court are anticipated by COPFS in the 2018 calendar year, of which COPFS estimate 90% (or 980) meet the definition of “deemed vulnerable witnesses” in section 271(1)(c) of the 1995 Act. COPFS do not record similar data in relation to the Sheriff Court. However, data collected by SCTS on special measure applications indicates that there could be as many as 1,900 deemed adult witness applications in respect of sheriff solemn cases. If 90% of these applications, as evidenced in the High Court, are assumed to relate to “deemed vulnerable witnesses” then the number of estimated applications in the Sheriff Court totals approximately 1,700 per annum. Whilst more detailed analysis will be required as the necessary regulations are developed, this information (as summarised in Table 15) provides a high level estimate of the potential numbers of adult deemed vulnerable witnesses that could be impacted by any extension to the new rule on pre-recording.

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Table 15 – Estimated number of adult deemed vulnerable witness applications

	High Court	Sheriff Court	Total
Estimated number of adult deemed vulnerable witness applications	980	1,700	2,680

39. Based on the high level data provided by COPFS and SCTS, the maximum estimated cost of extending the new rule to all adult deemed vulnerable witnesses, utilising unit costs for commission and ground rules hearings as identified for the existing provisions, is in the region of £14m. As previously highlighted, the final cost will be dependent on the sub-categories identified in any proposed regulations and the number of vulnerable witnesses who actually provide evidence by commission. As the volumes of commissions increase, it will also be important that when the necessary Regulations are brought forward, that any wider impact for justice stakeholders is taken into consideration. This will include whether at that time, any one-off costs to support technology and infrastructure may fall to organisations such as SCTS, COPFS, SLAB, SPS or Police Scotland.

Table 16 – Estimated cost impact of extension of new rule for all adult deemed vulnerable witnesses in the High Court and Sheriff Court

	High Court cost per commission*	Projected volume of 980 applications
SCTS	£1,001	£981,000
COPFS	£2,793	£2,737,000
SLAB	£2,095	£2,053,000
SPS	£200**	£196,000
Total	£6,089	£5,967,000

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	Sheriff Court Unit Cost*	Projected volume of 1700 applications
SCTS	£772	£1,312,000
COPFS	£2,238	£3,805,000
SLAB	£1,772	£3,012,000
SPS	£200**	£340,000
Total	£4,982	£8,469,000
Total for High Court and Sheriff Court	£11,071	£14,436,000

* Includes cost of ground rules hearing

** This is the cost per journey from prisons to court buildings, although it is likely that there would not be a cost for every commission as outlined at paragraph 29

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Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill

Financial Memorandum

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