

BAIL AND RELEASE FROM CUSTODY (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 Bail and Release from Custody (Scotland) Bill, introduced in the Scottish Parliament on 8 June 2022.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 16-EN);
 - a Policy Memorandum (SP Bill 16-PM);
 - a Delegated Powers Memorandum (SP Bill 16-DPM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 16-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 – WHAT THE BILL WILL DO

4. The Bill is in three parts which focus on two separate stages of the criminal justice process in Scotland.
5. Part 1 focuses on how custody is used as part of bail and remand decision making in Scottish courts and will, amongst other matters, reform the legal framework within which courts make decisions in individual cases regarding the use of bail and remand as part of a criminal court process.
6. Part 2 focuses on how certain release from prison custody mechanisms operate, with an emphasis on increasing opportunities for improved reintegration of people leaving prison, and improving the support provided to them on release to reduce the risk of reoffending. The Bill also makes provision to provide information on prisoner release to Victim Support Organisations and introduces a permanent power of executive release in emergency situations.

7. Part 3 contains the usual final provisions, including the commencement power and a power to make ancillary provision.

8. In line with the approach in the Bill, this Financial Memorandum deals with the provisions relating to bail and the provisions relating to release from prison custody separately.

9. The provisions within this Bill are intended to reduce crime, reoffending and future victimisation and are underpinned by a commitment to continuing to protect victim safety and wider public protection.

10. This Bill is part of a wider programme of work to reduce reoffending in Scotland, which includes a focus on reducing the use of short-term imprisonment in favour of community-based interventions and improving support for people leaving prison. The Scottish Government consulted¹ on proposed approaches to reform how bail and remand are used and how release from custody mechanisms operate. This Bill has been informed by the responses to that consultation².

PART 1 (SECTIONS 1 TO 5) – BAIL

11. The provisions in Part 1 of the Bill can be broadly split into four distinct areas. These are:

- Enhanced role for justice social work in provision of information to the court
- Reform to the legal framework within which bail decisions are made
- Recording of reasons when bail is refused
- How periods on electronically monitored bail conditions affects time served for custodial sentences

Section 1 – Enhanced role for justice social work in provision of information to the court

12. When the court is considering the question of bail for the first time in a criminal justice process, it is proposed to enhance the role of justice social work so they can better inform the decision to be made by the court. This will be achieved by giving a new explicit right for justice social work to offer information to the court to help inform the court's decision on the question of bail. There will also be an explicit provision expressly enabling the court to proactively seek information from justice social work on a question of bail (in line with existing provision in relation to the prosecutor and the defence).

Sections 2-3 – Reform to the legal framework within which bail decisions are made

13. For those accused of criminal offences, the Bill makes provision to refocus the legal framework which is used to make decisions as to when custody is able to be imposed by a criminal court, so that accused persons who do not pose a risk to public safety or to the delivery of justice should be admitted to bail as the criminal justice process proceeds. The policy intention of refocusing the bail decision-making framework in this way is to limit the use of remand in custody

¹ [Bail and release from custody arrangements: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/bail-and-release-from-custody-arrangements-consultation)

² [Bail and release from custody arrangements: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/bail-and-release-from-custody-arrangements-consultation-analysis)

to those that may be said to pose a risk of serious harm. As part of how a court determines the question of bail for an accused person, consideration of the safety of complainers from harm in a given case is explicitly recognised as forming part of the court's consideration of public safety.

14. The Bill also makes provision to seek to simplify aspects of the legal framework within which the court makes a decision on the question of bail. This will be achieved through removal of the current rule that in solemn proceedings where a person is accused of certain serious offences and has a previous conviction on indictment for similar such offences, bail can only be granted if there are exceptional circumstances justifying bail. This will mean decisions on the question of bail in all cases will be made within an adjusted legal framework based on the new bail test, which has considerations of public safety and prejudice to the interests of justice as the focus of the decision-making process.

Section 4 - Recording of reasons when bail is refused

15. When the court has decided to refuse bail, the Bill makes provision that the grounds on which bail is refused and its reasons will be noted in the court record of proceedings. This will be achieved through a new requirement falling on the court to record the grounds and reasons in this way. When refusing bail solely on the ground there is a substantial risk of absconding or failing to appear, the court will also be required to state the reasons why it has reached this view. Where electronic monitoring (EM) for bail is not deemed appropriate and bail is refused, it will also be an explicit requirement for the court to explain why the possibility of EM was not taken up.

Section 5 - How periods on electronically monitored bail conditions affects time served for custodial sentences

16. The Bill makes provision that, at the sentencing point of the criminal justice process, time spent by an accused person on EM bail awaiting trial or sentence may be accounted for against any eventual custodial sentence. This will be achieved by requiring the court to have regard to any period of time spent on bail, subject to an electronically monitored curfew condition with the court being required to determine if some, all or none of that time should count as time served against a custodial sentence.

COSTS ON THE SCOTTISH ADMINISTRATION

17. There is no specific timetable for implementation of the Bill. This reflects the uncertainty about the exact time it will take for the passage of the Bill and the exact form the Bill will take if passed by Parliament. For the purposes of the estimates provided, it is assumed implementation may take place from 2024-25 onwards.

Scottish Prison Service

18. In considering the costs relating to adjusting the criteria used by the court when they make their bail decisions, it is not possible to estimate the impact the provisions will have on the number of people held on remand.

19. While the overarching aim of the provisions is to refocus how custody is used at the initial point of the criminal justice process when a person is accused of a criminal offence, no target or goal as to impact on use of custody is set through operation of the provisions. This reflects the independent operation of the criminal justice system where targets or goals would not be appropriate.

20. The number of individuals held on remand at any given time is subject to a wide range of factors relevant to the question of bail, including the nature of the offences accused persons have been charged with, the previous convictions of accused persons and other factors which vary from case to case. There is also uncertainty as to the length of time a person if remanded will remain on remand. More fundamentally, it is also not possible to assess the specific impact of these reforms on independent decision-making of the court.

21. However, in order to aid understanding and on the basis that the overarching policy intent of refocusing the use of custody could encourage greater use of bail in future with reduced use of custody, an illustrative saving in respect of the prison population is given if the impact of the reforms were to lead to a 5% reduction in the use of remand, a 10% reduction in the use of remand and a 20% reduction in the use of remand. These are not estimated savings, but are provided only for illustrative purposes to help understand what savings could be made from an impact of the bail reforms which leads to a reduced use of custody in the future.

22. The number of people held on remand has increased since the onset of the Covid-19 pandemic in March 2020. The pandemic has had a considerable impact on the criminal court system with a backlog of cases developing through the necessary need to reduce and, in some situations, halt the throughput of criminal cases.

23. Prior to the pandemic, the average daily remand population in 2019-20 was just over 1,500. This represented around 19% of the overall daily prison population.

24. As at 7 April 2022, the remand population was 2,214. This represented 29.5% of the overall daily prison population. The remand population has consistently exceeded 2,000 since July 2021.

25. For the purposes of providing the illustrative examples of what notional changes in budget requirements could be made through the bail reforms leading to a reduced use of remand, figures are provided based on the pre-pandemic levels of remand. This reflects that there are steps underway to deliver sufficient throughput of criminal cases which will help address the backlog and reduce the number of people who at any given time are held on remand. As noted above, the reforms proposed in the Bill will not likely be implemented until 2024-25 at the earliest by which time the criminal courts should have continued their recovery from the effects of the backlog.

26. This Bill largely affects initial decisions to remand and would affect the untried population rather than the entire remand population (which also includes those convicted and awaiting sentencing).

27. The average daily prison population for persons held untried on remand was 1,177 persons in 2019-20. If a 5% reduction in the number of persons held on remand was achieved, this would

translate to 59 prison places. To translate this into a cost estimate, we would need to understand the cost implications of a prison place.

28. Scottish Prison Service (SPS) estimate that the annual average cost of a prison place in 2020-21 was £39,350³ - excluding capital charges, exceptional payments and the cost of the Court Custody and Prisoner Escort contracts. This is an average figure and does not account effectively for complexities associated with allocation of costs relating to the holding of prisoners or consider the issue of average versus marginal costs. It is therefore a somewhat crude figure to use to estimate the cost implications for SPS. Despite these reservations, it is considered the best available cost information to use in financial modelling such as this.

29. Assuming a saving of £39,350, and applying OBR inflation forecasts⁴ to translate to 2024-25 prices would give a cost of £42,274 per prison place saved. The total estimated savings arising in 2024-25 prices associated with an illustrative 5% reduction in 2019-20 remand populations would therefore be £2.494m (59 prison places at a cost of £42,274).

30. Applying a 10% reduction to remand populations would imply a population reduction of 118 and savings of £4.988m and applying a 20% reduction would equate to 235 prison places and a saving of £9.934m.

31. If the provisions lead to reduced use of remand as part of the criminal justice process, these illustrative figures provide an indication of the potential impact that could be felt by SPS. It is important to note that cost savings are both illustrative and notional however.

32. The cost savings are illustrative with no estimate being provided for the impact of the bail reforms on the use of remand for the reasons given above.

33. The costs savings are notional as savings are based on existing spend on current numbers of prisoners and no actual cost savings would be realised by, say, 5 fewer prisoners being held in custody on a given day as compared to the next day. It would only be if there was a significant and sustained reduced use of custody within the criminal justice system to such an extent whereby, for example, individual prison establishments could be closed that the provisions could give rise to actual savings as opposed to notional savings.

34. Alongside the overall illustrative and notional impact of the provisions falling on the SPS arising from changes in the use of remand, there may also be an impact on SPS from the time served on electronic monitoring bail provision.

35. For the purposes of custodial sentencing, the Bill provides the court must have regard to time spent on a curfew awaiting trial or sentence which is at least nine hours in any 24 hour period and which is subject to electronic monitoring.

³ Pages 92 and 93 - <https://www.sps.gov.uk/Corporate/Publications/Publications.aspx>

⁴ Forecasts of the GDP Deflator are used from the March 2022 Economic and Fiscal Outlook. These can be found in the supplementary economy tables, available at: <https://obr.uk/efo/economic-and-fiscal-outlook-march-2022/>

36. Electronic monitoring for bail has recently been introduced from May 2022 under the Management of Offenders (Scotland) Act 2019. This allows the court in granting bail to make use of electronic monitoring to help increase the likelihood of adherence to bail conditions. While it will be a matter for the court to determine its use in any given case, it is expected some people granted bail will receive a further condition of bail requiring a curfew on their movement. Where such a condition is imposed which meets the criteria in the Bill (i.e. it is at least nine hours in a 24 hour period and it is subject to electronic monitoring), the court must have regard to this when sentencing with the potential for the court to allow for this when determining time served for the custodial sentence imposed.

37. It is not possible to estimate what impact this reform may have as it is not known how often the court will impose such a condition. Even if it were known, it is not known how often a custodial sentence would be imposed subsequently in such a case. Finally, even if both these elements were known, discretion sits with the court as to how to have regard to the period of time subject to a relevant condition when assessing time served of a custodial sentence.

38. For illustrative purposes only, the following example is provided to help understand what may arise following implementation of the time served on EM bail reform.

39. A person is subject to a relevant further condition of bail i.e. a curfew of at least nine hours in a 24 hour period which is electronically monitored. The person is subject to this condition for, say, 6 months. The person is convicted and receives a custodial sentence of, say, 2 years. The court has regard to the time spent on a relevant further condition and decides that, say, all of it is relevant for consideration of time served. The period of 6 months is converted to 3 months through the formula contained in the Bill. The person enters custody to serve a 2 year sentence with 3 months' time served.

40. As can be seen from this example, it is likely that this reform will lead to some notional savings for SPS as time served for custodial sentences increases in some cases due to a person being subject to a relevant further condition of bail. However, for the reasons given it is not possible to provide a specific estimate of the impact.

41. There will also be specific impacts for justice agencies involved in the processes affected by the provisions.

Crown Office and Procurator Fiscal Service

42. There will be an impact on the Crown Office and Procurator Fiscal Service. Training and updated guidance for prosecutors will be required as part of implementation of reforms to bail law. These costs will be minimal with the necessary steps taken as part of the normal arrangements for training and guidance within Crown Office that arise on an ongoing basis.

43. With justice social work having an enhanced role in respect of informing the court's decision-making on bail, it is likely greater engagement between Crown Office and justice social work may arise e.g. in cases where the Crown will be opposing bail. This greater engagement is not required as a direct result of the bail reforms, but seems likely to flow naturally from the

requirement that justice social work should be ready to inform the court's decision when an accused is appearing in court on first appearance. In particular, justice social work having an understanding of when the Crown Office is likely to oppose the granting of bail will be helpful in allowing justice social work to assess when information they can provide to the court may be seen as particularly important (i.e. those cases when an accused person may be more likely to be remanded). It is not considered there are specific, direct costs arising for Crown Office in this regard with no specific estimate provided as to the impact on Crown Office of this likely greater engagement and information sharing.

Scottish Courts and Tribunals Service

44. There will be an impact on Scottish Courts and Tribunals Service (SCTS). Changes to the decision-making of the courts in relation to bail and remand so that, say, fewer cases will arise where remand is imposed will not, in itself, create any cost impact for SCTS.

45. Training of the judiciary is the responsibility of the Judicial Institute for Scotland. They operate under the authority of the Lord President. As with any significant new legal reform, there may be a need for training for the judiciary. No specific cost estimates are provided as it will be for the Judicial Institute for Scotland in due course to assess whether there will be a need for any specific new training for the judiciary. That will be assessed as and when legislation is passed and plans for implementation are progressed.

46. Changes to the information the court has to inform their decision-making and recording of reasons in the court record will have implications.

47. In each first appearance in a case of an accused in court, justice social work will have the opportunity to offer information to the court.

48. In addition, at any hearing with an accused where the question of bail is considered, the court may ask for information from justice social work. This will be required to be provided to the court, with the exception where the court is seeking information relating to the likelihood of a risk occurring/something not occurring if bail were to be granted (when no requirement to provide information would arise).

49. While justice social work will be expected to be available for all first appearances in court of an accused, the operation of this power for the court to request information at any hearing where bail is considered may give rise to an additional burden on SCTS. This burden would be to notify the relevant justice social work of the request of the court so that justice social work can respond to it.

50. The addition of justice social work to the statutory list of those who the court must give an opportunity to offer information may add some limited time to the time taken by the court for bail decisions to be made. This time will depend on whether justice social work have information to provide and how extensive this information may be in a given case. It should also be noted that justice social work will often provide information to the court under existing arrangements, i.e. without the new specific provision being in place.

51. On average, over the period 2016/17 to 2019/20 around 77,000 initial bail decisions were considered per year and of these around 9,100 per year (11.8%) resulted in remand. In the first pandemic year (2020/21), around 66,000 initial bail decisions were considered and of these around 7,300 per year (11.2%) resulted in remand.⁵

52. If the court was to consider the information provided by justice social work in 77,000 cases, it is estimated from information suggested by the SCTS that there would be additional costs of approximately £700,000 per annum.

53. This is based on an assessment of an additional 2 minutes of court time being necessary per case. It is important to note there is a significant degree of uncertainty with this estimate as certain assumptions require to be made e.g. it has been assumed it will not be necessary to adjourn any cases (adjournments in a minority of cases seem probable but it is very difficult to estimate how many), but set against that it may be justice social work does not always provide information in each of the 77,000 cases (which may mean 2 minutes will be an over-estimate as some cases it will take seconds for justice social work to advise this to the court).

54. Purely for the purposes of illustrating the potential impact, an hourly cost of £273 for judicial and SCTS staff costs has been provided by SCTS. This does not include building costs. With an additional 154,000 minutes of court time required, this equates to 2,567 hours which would cost approximately £700,000 per annum.

55. The recording of grounds and reasons in the court record will also have an impact on SCTS. In relevant cases, this will require the court clerk to record the grounds and reasons for bail being refused. In addition, where the person is remanded in custody, this requirement will include the court's reasoning as to why electronic monitoring of certain bail conditions, such as a curfew requirement, cannot be used in the given case as opposed to the person being remanded in custody.

56. In addition, where the court refuses bail solely on the basis that it is necessary to prevent a significant risk of prejudice to the interests of justice (i.e. not in the interests of public safety), this will require to be recorded along with reasons why special bail conditions such as supervision or support cannot be used to allow for bail to be granted.

57. These recording requirements place a new responsibility on clerks in the busy court environment where bail hearings are taking place. Recording reasons will add time to the work of the court clerk.

58. Assuming an average 9,100 cases per year where reasons for remand will need to be recorded based on the period 2016/17 to 2019/20, it is estimated from information suggested by the SCTS that there would be additional costs of approximately £41,405 per annum. This is based on an additional 1 minute of court time being necessary per case at an hourly cost of £273. This equates to 9,100 additional minutes or 152 additional hours which amounts to £41,405 per annum.

⁵ Chapter 3.2.2 [Sheriff Courts - remand and bail outcomes: occasional paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/occasional-papers/2021-06-08/sheriff-courts-remand-and-bail-outcomes-occasional-paper-16-2021-2022/pages/322-323.aspx)

59. SCTS have also advised changes will be required to their internal IT system to reflect the new recording requirements for reasons relating to when bail is refused. SCTS will assess the likely costs in this area as part of implementation (assuming the Parliament passes the legislation). No specific estimate is given at this time as this assessment will take some time to work through, but it is not expected the costs would amount to more than £100,000.

60. In general terms, it is anticipated that over the longer-term, greater use of non-custodial options within the criminal justice system will lead to reductions in offending and re-offending. This is when compared with the use of custody. There is, for example, clear evidence that use of custody for short periods is less effective in terms of offending and re-offending than use of community-based options. While use of remand is distinct from use of short custodial sentences (i.e. decisions are made on a different basis), underpinning the bail reforms is the specific concern about the undue, harmful impact on people losing their liberty for short periods in terms of impact on employment, family relationships etc.

61. Taking a longer term view, it is hoped these positive impacts in terms of offending and re-offending will help reduce levels of crime, future victimisation and ultimately require less criminal justice system time (police, prosecutors and the courts) to be spent on dealing with crime as there will be less of it.

62. In the shorter-term, reduced use of remand, if that arises from the bail reforms, may give rise to some increase in the need for court consideration of things like bail breaches. This reflects that the risk of bail breaches increases in overall terms the greater the number of people on bail at any given time. In the context of a positive longer-term impact in respect of the life chances of those accused and convicted of offences as well as communities, there may be an impact on courts in this area in respect of the need to respond to bail breaches as well to respond to a likely need for an increased number of bail review hearings (simply based on there being more people on bail at any given time).

COSTS ON LOCAL AUTHORITIES

63. There will be an impact on local authority justice social work services.

64. Justice social work is delivered through local authorities as part of their overall social work responsibilities.

65. The funding for community justice services (which includes delivery of community sentences, alternatives to remand, and diversion from prosecution) has totalled around £119m in 2021-22. This funding includes around £108m for justice social work.

66. This was distributed to local authorities, which are primarily responsible for the delivery of such services. The remainder comprised £11m of direct funding to third sector organisations for the delivery of related services. In 2021/22 an additional £11.8m of covid recovery funding was distributed to local authorities to support pandemic recovery efforts. This funding has continued into 2022/23 with an increased budget of £15m. The additional £3.2m has been targeted to support the development and expansion of bail-related services and alternatives to remand.

67. Certain aspects of the provisions will result in justice social work becoming more consistently and commonly involved in informing the decision of the court as to the question of bail. This will particularly be focused on the first consideration of the court on the question of bail.

68. While practice varies currently, it is known that justice social work is often involved in providing information to the court for questions of bail under existing law. In future, there will be a requirement for this to happen.

69. When an accused person first appears in court, justice social work must always be given an opportunity to offer information relevant to the question of bail to the court.

70. At any hearing where the question of bail is being considered, the court may request information from justice social work. The expectation is that justice social work will respond to the request for information if made, though they will not be required to offer opinion on the risk of something occurring/likelihood of something not occurring to the court if bail were to be granted.

71. Providing an estimate as to the direct cost impact of these requirements is challenging.

72. This is in part because justice social work already often meet the requirements in some parts of the country that will arise from the provisions. As such, there may be limited or no practical impact in those areas where delivery of information to the court already meets the requirements arising from the provisions. The operational challenge for justice social work, and in turn estimating the cost impact, will be in ensuring there is a consistent delivery in meeting these requirements across all criminal courts in Scotland where bail hearings take place.

73. A key aspect relating to the provision of information to the court within the bail process is that the timescales for decision-making can on occasion be relatively swift, especially where an accused person is appearing in a custody court⁶. A person kept in police custody on, say, a Monday requires to be brought before the court no later than by close of Tuesday.⁷ The court's determination as to whether to admit the person to or refuse bail must then be made before the end of the following day (being the day after the day on which the person accused or charged is brought before the sheriff or judge).⁸

74. For cases where justice social work will have had previous involvement with the accused person, this represents a starting point for consideration of what information may be helpful to the court in informing the decision of bail e.g. family circumstances etc. It is accepted even here though, ensuring up-to-date knowledge is available for use by the court will be challenging.

⁶ A custody court is a court where a person has been arrested, charged and kept in custody by the police where the first appearance in court is made directly from police custody. The timescales for the court in considering these cases are short as noted in the text, as distinct from other first appearances when a person appears from the community e.g. from an undertaking. For these kinds of appearances, they often occur up to 28 days after charge and so there is more time in the process for justice social work to be ready to provide information.

⁷ See section 21 of the [Criminal Justice \(Scotland\) Act 2016 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁸ See section 22A of the [Criminal Procedure \(Scotland\) Act 1995 \(legislation.gov.uk\)](https://legislation.gov.uk)

75. In cases where an accused person has had no previous engagement with justice social work, they will be starting their consideration of what information to provide to the court on the question of bail from a place of little or no direct knowledge.

76. It is accepted this places a new burden on justice social work to re-assess, and potentially, re-engineer how they deliver information to the court to inform the court's decision-making as to the question of bail.

77. Work is underway and ongoing to assess ways in which justice social work may respond to the increasing demands being placed upon them through both this Bill, when implemented, and the wider non-statutory expectations from the criminal justice system process. This includes establishing how justice social work capacity can be increased and where practice can be developed to respond to needs of relevant information being available.

78. Funding for this enhanced role for justice social work is already being provided to a certain extent. In 2022/23 an additional £3.2m has been allocated across all local authorities towards further increasing justice social work capacity in the area of bail. This funding has been targeted towards supporting bail assessments to be undertaken at increased levels in every court in Scotland and the development of bail supervision services.

79. Within this context of the evolving operation of justice social work, providing an estimate of the specific direct new requirements the bail provisions will bring to justice social work is challenging, given the new statutory requirements in the Bill do not mean justice social work will always offer information in every first appearance in court. However, justice social work do need to be ready to assess whether to provide information.

80. On average and as noted above, over the period 2016/17 to 2019/20 around 77,000 initial bail decisions were considered per year and of these, around 9,100 per year (11.8%) resulted in remand. In the first pandemic year (2020/21), around 66,000 initial bail decisions were considered and of these around 7,300 per year (11.2%) resulted in remand.⁹

81. It is not known how many of these 77,000 initial considerations of bail would have had information from justice social work made available to the court. For the purposes of providing an estimate, it is assumed one quarter would have had information provided by justice social work. This leaves approximately 57,750 where in future there will be a greater expectation, though not a statutory requirement, for justice social work to provide information to the court.

82. It is estimated the annual cost of a full time justice social worker amount to £52,000. This equates to an estimated hourly cost of £29 (£52,000/(35 hours per week x 52 weeks). It is estimated an average length of assessment will take 90 minutes. With an estimated 57,750 assessments to be

⁹ Chapter 3.2.2 [Sheriff Courts - remand and bail outcomes: occasional paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/sheriff-courts-remand-and-bail-outcomes-occasional-paper/pages/11.aspx)

carried out, this equates 86,625 hours of work time. This would cost an estimated £2.512m (86,625 hours x £29 per hour)¹⁰.

83. Given the wider ongoing reassessment of how justice social work delivers to the expectations of the criminal justice system, this notional cost impact will be part of the wider assessment of necessary funding for justice social work in the future as consideration will need to be given to wider workforce capacity, issues of rurality and the potential future role of virtual courts.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Police Scotland

84. It is not expected there will be any direct significant impact on Police Scotland. The changes made relate to court process and procedure and there is no direct impact on Police Scotland from these provisions.

85. It is, however, worth noting that part of the aim of the bail reforms is to limit the use of remand in custody to those that may be said to pose a risk of serious harm and generally support the use of electronic monitoring of certain bail conditions in appropriate cases. This could be, for example, operation of curfews as special bail conditions so that accused persons can appropriately and safely remain in the community rather than being remanded. However, specific provision facilitating the use of electronic monitoring of bail is not contained in the Bill as provision sits separately in the Management of Offenders (Scotland) Act 2019 and associated secondary legislation made under it.

86. Monitoring adherence to bail conditions is an existing part of Police Scotland's overall responsibilities. If in the future there are more people on bail and less people on remand, this does mean Police Scotland will have a continuing and larger role in respect of accused persons. More specifically, if in the future there is a reduced use of remand, then that would suggest an increased role for Police Scotland in respect of adherence to bail conditions. However, for the reasons given at paragraphs 18-40, no estimate is being given as to the impact of the reforms on the use of remand (and by default use of bail).

Scottish Legal Aid Board

87. It is not expected there will be any significant impact on the Scottish Legal Aid Board. No new court hearings are required through the provisions; instead the reforms focus on adjusting the framework within which bail decisions are made as well as improving the information available to the court and better recording of decisions-made. None of these impact on legal aid.

¹⁰ In the absence of an established evidence base on what justice social workers are paid, this analysis assumes that a typical salary may be £40,000 per annum. It is further assumed that costs to the employer are 130% of that gross salary. The costs are then pro-rated assuming a 35 hour working week over 52 weeks to give a cost of £29 per hour. This methodology was agreed with representatives of justice social work.

This document relates to the Bail and Release from Custody (Scotland) Bill (SP Bill 16) as introduced in the Scottish Parliament on 8 June 2022

88. It is not anticipated that there will be any new costs falling on any other bodies, individuals or businesses as a result of the bail and remand provisions.

Table 1

Sections 1 to 5 Bail			
Scottish Administration			
Falling on	Nature of costs	One off	Recurring from 2024-2025 onwards
Crown Office and Prosecution Service	Training and Guidance	Minimal	None
Scottish Courts and Tribunals Service	Potential increase in court time	None	£700,000
Scottish Courts and Tribunals Service	Changes to IT systems	Up to £100,000	None
Scottish Courts and Tribunals Service	Additional Recording requirements	None	£41,405
Local Authorities			
Justice Social Work Services	Providing additional information to inform bail hearings if requested by court	None	£2,512,000

PART 2 (SECTIONS 6 TO 11) – RELEASE FROM PRISON CUSTODY

89. Part 2 of the Bill (sections 6 to 11) relate to the mechanisms supporting release from prison custody. The policy intention behind the provisions in the Bill is to improve support for people leaving prison and to provide more opportunities to enable their successful reintegration into the community. This links to the overarching aims of the Bill to reduce reoffending, crime and victimisation. As with the provisions relating to bail law, the provisions relating to release from custody are underpinned by the principles of protecting victim and public safety.

90. The current level of reoffending has significant implications for Scottish society. The total economic and social cost of reoffending in Scotland is estimated at £4 billion a year¹¹. The Scottish Government considers that achieving a reduction in reoffending requires, in part, the successful reintegration of offenders into Scotland’s communities, supported by a cross-sectoral approach with close links between the criminal justice system and wider public sector services.

91. This section of the Financial Memorandum focuses on Part 2 of the Bill and takes each provision individually, setting out the anticipated associated costs on the Scottish Administration, Local Authorities and other bodies for each. This is a different approach to the first section of this Financial Memorandum and has been taken because the provisions in this second Part of the Bill relate to different elements of the release process, and therefore have different impacts on the various bodies involved. A summary of each of the provisions is set out below.

Section 6 - Prisoners not to be released on certain days of the week

92. Liberation from prison custody on a Friday or the day before a public holiday will now no longer take place, with the release date automatically being moved to the preceding suitable day, e.g. the Thursday before. This is intended to help ensure that people leaving prison can access the services they need to support their successful reintegration, reducing the likelihood that they will need to access unplanned services.

93. To ensure that community-based services are not overwhelmed on a Thursday, individuals whose release date falls on a Thursday (and haven’t already had the date moved because their liberation date fell on a Friday or the day before a public holiday) will have their release date moved to the last preceding suitable day (in most cases the day before, i.e. Wednesday).

Section 7 - Release on licence of long-term prisoners

94. The Bill will replace Home Detention Curfew for long-term prisoners with a new approach to temporary release for this cohort. The Bill makes provision for long-term prisoners to be released on a new temporary licence in advance of their Parole Qualifying Date (or subsequent review if not released at PQD). This will be subject to risk assessment and consultation with the Parole Board. Release on this licence will be subject to conditions including curfew (which can be monitored by electronic monitoring) and supervision by justice social work. This is intended to

¹¹ [Costs of the criminal justice system in Scotland dataset: 2016-17 \(published December 2019\) - gov.scot \(www.gov.scot\)](https://www.gov.scot/costs-of-the-criminal-justice-system-in-scotland-dataset-2016-17-published-december-2019)

better support the reintegration of long-term prisoners and to also provide further evidence to the Parole Board to inform release decisions.

Section 8 - Power to release early

95. The Scottish Ministers will have a power to direct the early release of groups of prisoners in emergency situations to protect the security and good order of prisons, and the health, safety and welfare of prisoners and prison staff, similar to equivalent powers that exist in other jurisdictions

Section 9 - Duty to engage in release planning

96. A new duty will be placed on named public bodies to engage in the pre-release planning of people in prison. This is an extension of existing duties on community justice partners and the wider community planning partnerships and is intended to encourage partnership engagement in planning for prison release at an earlier point in an individual's sentence so that support can be put in place from the point of release.

97. Over the longer term, it is anticipated that providing improved support to people leaving prison and creating the conditions which better enable their successful reintegration will help reduce the risk of further reoffending with associated reductions in the economic and social costs of offending.

98. As with the reforms to bail law, it is hoped that these changes will help to reduce crime in future and associated victimisation and lead to better outcomes for people, families and communities. Over time, it is intended that this will have a positive economic and social benefit.

Section 10 - Throughcare support

99. The Bill requires the Scottish Ministers to publish statutory minimum standards for throughcare support which relevant named bodies must have regard to when providing throughcare support for individuals before, during and after their release from prison. This is intended to promote a consistent approach to the provision of throughcare support across Scotland.

Section 11 - Provision of information to Victim Support Organisations

100. The rights of victims to receive certain information regarding the release of a prisoner in their case will be extended to enable victims to nominate a Victim Support Organisation (VSO) to receive this information on their behalf, or at the same time as they receive it. VSOs will also have the right to ask for certain information about a particular prisoner's release if it will help to inform the support they are providing to the victim in the case.

SECTION 6 - PRISONERS NOT TO BE RELEASED ON CERTAIN DAYS OF THE WEEK

Costs on the Scottish Administration

101. SPS already provide information to all local authorities about planned releases into their area 12 weeks in advance of liberation so that local authorities can assess which individuals will require their support so that steps can be taken to put measures in place (e.g. housing appointments etc).

102. The change proposed under this provision will not change that process, or the service(s) an individual will require. It will simply bring forward an individual's release date by a few days if their liberation date is on a Friday or the day before a public holiday.

103. There will some limited costs associated with the policy falling on the SPS. It will be required to update its IT systems to reflect that prisoners whose release date falls on a Friday or the day before a public holiday automatically have their release date moved to the last suitable preceding day. And that those whose release falls on a Thursday automatically have that moved to a Wednesday.

104. It is estimated that one-off costs of £300,000 would arise in updating SPS IT systems in the period ahead of commencement of the reforms (i.e. if commencement took place in January 2024, these costs would fall in 2023/24). These costs are based on recent experience of other SPS IT system level changes that impact the sentence timeline and calculation assurance process.

105. The costs and efficiencies associated with minimising the need for prisoners to have to access emergency support upon release are difficult to quantify. The Scottish Government considers that preventing prisoners' release on a Friday or the day before a public holiday where support services are more scarce and where any problems in service delivery may not be resolved until the following week, will more effectively support prisoners to resettle in communities. Arranging releases on weekdays where there is less potential for services to be unavailable may produce an increase in the volume of individuals who engage with them – but only to engage with those services which they are already entitled to receive, and not to expand demand overall. The change will also reduce the risk that individuals who are not able to access essential services on the day of release will have to depend on emergency or crisis services in the meantime (which would be more disruptive and expensive for those services) before engaging with mainstream services at a later date.

106. The Scottish Government considers this is likely to bring some long-term efficiency savings as services are able to be provided on a more proactive basis rather than reactive basis. This is part of a wider programme of work to reduce reoffending.

Costs on local authorities

107. It is not thought that ending liberation on a Friday or the day before a public holiday will result in additional costs on local authorities as this approach will not change the support requirements of an individual, it will only bring forward the day of their release by a few days. As

noted above, there may be savings by helping to ensure that more proactive support can be provided, rather than the individual needing to access emergency or unplanned support over the weekend. It is not possible to quantify these savings however given the unpredictable nature of individual's requiring to access emergency support. Furthermore, moving planned Thursday releases to the preceding Wednesday (i.e. the day before) is intended to ensure that services are not over-burdened on a Thursday.

Costs on other bodies, individuals and businesses

108. Given this is not a new process, it is not anticipated that there will be any new costs falling on other bodies, individuals or businesses as a result of this provision. As with local authorities, the change in scheduling of release has the potential to reduce the volume of individuals seeking support from third and voluntary sector organisations on Fridays and before public holidays, when services can be limited – and to reduce the number of individuals seeking emergency support from them when they have not been able to access mainstream services.

SECTION 7 - RELEASE ON LICENCE OF LONG-TERM PRISONERS

109. The Bill replaces the use of Home Detention Curfew for long-term prisoners with a new approach. Long-term prisoners are prisoners sentenced to four years or more. This does not include life sentenced prisoners or those serving an Order of Life Long Restriction.

110. This approach is intended to support the overarching policy intent of providing long-term prisoners with further reintegration opportunities in order to support their resettlement in their community and reduce the risk of further reoffending. It is also intended to provide the Parole Board with further evidence of risk mitigations and an individual's ability to be managed safely in the community to inform the Board's decision on whether to recommend release under parole licence.

111. The Bill will introduce two specific approaches to how long-term prisoners could be released on licence (reintegration licence) in advance of their Parole Qualifying Date (PQD) or release at subsequent review if not released at PQD. The PQD for long-term prisoners is the half-way point of their licence:

a) In advance of the Parole Board's consideration of a prisoner at PQD (or subsequent review if not released at PQD)

The Bill provides an ability for the Scottish Ministers (the Scottish Prison Service in practice) to release certain long-term prisoners on a reintegration licence in advance of their Parole Qualifying Date (PQD) or in advance of a subsequent review if not released at PQD. This will be subject to risk assessment and consultation with the Parole Board for Scotland. Release on this licence will be in advance of the Parole Board's consideration of whether to recommend release at PQD (or subsequent review if not released at PQD).

b) Following the Parole Board’s recommendation to release a long-term prisoner at PQD

The Bill provides for the Parole Board for Scotland to direct the Scottish Ministers to release a long-term prisoner on a reintegration licence where the Board has recommended the prisoner for release at the prisoner’s PQD. This is where the recommendation is made in advance of that date, allowing release on a reintegration licence between then and the PQD.

112. It is intended that individuals released under a reintegration licence will be subject to conditions, including those relating to:

- Curfew (which can be monitored by electronic monitoring); and
- Supervision by Justice Social Work.

113. Release on a reintegration licence will be for a maximum of 180 days.

114. This section addresses the anticipated costs of scenario a) and b) separately as follows.

a) In advance of the Parole Board’s consideration of a prisoner at PQD (or subsequent review if not released at PQD)

115. It is not possible to provide exact numbers of long-term prisoners who would be released on a reintegration licence by the Scottish Ministers in this scenario, as this would be based on the decisions taken by the Scottish Ministers, following consideration of risk assessments and the view provided by the Parole Board.

116. In considering estimated costs, the average number of long-term prisoners whose cases are considered annually by the Parole Board (either at PQD or subsequent review) has been used as a baseline as long-term prisoners whose cases are nearing consideration by the Parole Board will be eligible for release on a reintegration licence.

117. Between 2018/19 and 2020/21, the Parole Board reviewed an average of 700 long-term prisoner’s cases (either at PQD or subsequent review) annually¹². This does not include extended sentence prisoners or life sentenced prisoners (as defined in section 27 of the 1993 Act) as they will not be eligible for release on a reintegration licence.

118. Release on a reintegration licence would not be automatic and would be based on risk assessment and the Parole Board providing a view. It is not possible to accurately predict how many individuals would be released on this licence, therefore, estimates have been provided below on the basis of 5%, 10% and 20% of the potentially eligible cohort being released.

¹² Parole Board for Scotland Annual reports 2018/19, 2019/20 and 2020/21 - [Parole Board for Scotland \(scottishparoleboard.scot\)](https://www.scottishparoleboard.scot)

Costs on the Scottish Administration

119. There are a number of anticipated costs to the Scottish Administration which are broken down as follows.

Costs of electronic monitoring

120. As noted above, individuals released on a reintegration licence will be subject to conditions which will include curfew which can be monitored by electronic monitoring. There are associated costs for this which breakdown as:

- £130 installation/deinstallation;
- £7.74 per day for monitoring (based on the maximum 180 days)

121. The following table sets out indicative costs for the additional electronic monitoring requirements for this cohort. As above, this is based on estimates of 5%, 10% and 20% of the potentially eligible cohort being released and is also based on the maximum 180 day time limit. The figures in the table below assume that all releases on reintegration licence will be monitored via electronic monitoring.

Table 2

Estimated number of individuals	Estimated annual cost
5% (35 individuals)	£53,312
10% (70 individuals)	£106,624
20% (140 individuals)	£213,248

Costs on Scottish Prison Service

122. It is anticipated that the introduction of the ability for the Scottish Ministers to release certain long-term prisoners on a reintegration licence will lead to some additional costs for the Scottish Prison Service.

123. The Scottish Ministers (SPS) currently have the ability to release short and long term prisoners on Home Detention Curfew (HDC). As noted above, this Bill does not amend the process for short-term prisoners to be released on HDC and existing processes will continue for that cohort.

124. For long-term prisoners, SPS have established processes via the Integrated Case Management (ICM) system to manage and oversee and individual's progression. Decisions about progression through the estate are taken by multi-disciplinary Risk Management Teams (RMT), chaired by the Deputy-Governor of each prison.

125. There are also existing processes in place, between SPS and community partners, to develop and complete the parole dossier which is submitted to the Parole Board to inform their decision on whether to recommend release.

126. The introduction of the ability for the Scottish Ministers (SPS) to release long-term prisoners in advance of their PQD, subject to risk assessment and obtaining a view from the Parole Board, will follow these processes but is likely to result in some additional assessment requirements for Prison-Based Social Work (PBSW). PBSW services are provided by local authorities but paid for by the Scottish Prison Service by means of Memorandums of Understanding.

127. The annual cost of PBSW is currently around £4.9m and this is met from SPS budgets. It is difficult to accurately assess what additional requirements might be for PBSW and the current Memorandums of Understanding are not on a direct workload basis and cover a range of services provided by PBSW across the prison estate. It is therefore assumed there would be an estimated 5-10% increase in the current costs of PBSW as a result of the additional assessment requirements on the basis that there would be some additional work required. This would therefore lead to additional estimated annual costs of between £245k-£490k. These arrangements are currently under review and any additional requirements in light of the changes under this Bill will be factored into that review.

128. There will also be a requirement for SPS staff to receive guidance and training on the reintegration licence. This training and guidance will allow SPS staff involved in this process to understand the effect of the changes, their role in decision making, and respond to any queries that may arise from prisoners and their families. Training costs are estimated at £250,000 would fall in the year ahead of commencement of the reforms (i.e. 23/24 based on a January 2024 commencement). These estimates are based on recent experience of introducing an estate wide training update of a similar same scale (i.e. target audience and volume of recipients). The training would not be limited to the reintegration licence but would be required to extend to the case management process, warrant calculation mechanisms and assurance processes.

Costs on local authorities

129. The introduction of the reintegration licence for certain long-term prisoners will require Justice Social Work (JSW) to provide supervision support to individuals released on this licence. These will be individuals which JSW will supervise on their release on parole licence under existing arrangements but it could mean that more individuals are supervised for longer.

130. The estimated unit costs of statutory throughcare is £9,034 per year¹³. This includes supervision of the individual. It is recognised that it is challenging to accurately estimate the unit costs of social work activity but this provides a notional cost. The maximum period an individual could spend on a reintegration licence is 180 days (6 months), so the estimated additional costs for each person released on a reintegration licence are taken to be £4,517.

131. Based on the figures set out at paragraphs 117 and 118 above, the following estimated ranges of additional costs on local authorities (justice social work) have been provided.

Table 3

Estimated number of individuals	Estimated additional Justice Social Work costs (annual)
5% (35 individuals)	£158,095
10% (70 individuals)	£316,190
20% (140 individuals)	£632,380

¹³ [Costs of the criminal justice system in Scotland dataset: 2016-17 \(published December 2019\) - gov.scot \(www.gov.scot\)](http://www.gov.scot/costs-of-the-criminal-justice-system-in-scotland-dataset-2016-17)

Costs on other bodies, individuals and businesses

132. It is anticipated that the introduction of the Parole Board for Scotland assessing cases considered for release on a reintegration licence and providing a view to the Scottish Ministers will result in some additional costs for the Board.

133. Parole Board members will be required to receive training and guidance on the approach to assessing these cases. These one-off costs will fall in the year preceding implementation (2023/24) and are likely to total an estimated £24,000 (based on the average daily Board member rate of £300, current board member numbers (40) and a two day training requirement). Thereafter, training this process will form part of the standard training provided to Parole Board members.

134. It is thought that it is likely that the Board's assessment of cases in order to provide a view on whether an individual is suitable for release on a reintegration licence will require a full board (three members). Members' fees vary but taking an average daily rate of £300, the following notional costs are provided. The estimates below are based on one case a day being assessed. It may be possible for the Board to assess more than one case a day which would lead to reduced costs.

Table 4

Estimated number of individuals	Estimated annual Parole Board costs (based on £900 a day)
5% 35 individuals	£31,500
10% 70 individuals	£63,000
20% 140 individuals	£126,000

b) Following the Parole Board’s recommendation to release a long-term prisoner at PQD

Costs on the Scottish Administration

135. As noted above, the Bill also provides for the Parole Board to direct the release of long-term prisoners on a reintegration licence where they have recommended release at PQD. The period on a reintegration licence in this instance would last until the individual’s PQD when they would move onto a parole licence.

136. It is difficult to accurately predict the number of people whose release the Parole Board would direct on a reintegration licence. To provide notional costs, the estimates use the annual average number of long-term prisoners whose release at PQD was recommended by the Parole Board.

137. Between 2018/19 and 2020/21, that number was 74. Given the Parole Board has already recommended release in these cases, the estimated costs below are based on all or 50% of eligible long-term prisoners having release on a reintegration licence directed by the Parole Board.

Costs of electronic monitoring

138. As noted above, individuals released on a reintegration licence will be subject to conditions which will include curfew which can be monitored by electronic monitoring. There are associated costs for this which breakdown as:

- £130 installation/deinstallation;
- £7.74 per day for monitoring (based on the maximum 180 days)

139. The following table sets out indicative costs for the additional electronic monitoring requirements for this cohort. As above, this is based on estimates of all or 50% of this cohort being released. It should also be noted that 180 days has been given as a time period as that is the maximum time limit on a reintegration licence. This is to provide notional costs as it is not possible to accurately predict how long people will spend on a reintegration licence, given the interaction with parole timescales. The costs below assume that all individuals released on a reintegration licence will be subject to electronic monitoring.

Table 5

Estimated number of individuals	Estimated annual cost
All	£112,716
74 individuals	
50%	£56,358
37 individuals	

Costs on Scottish Prison Service

140. It is not anticipated that the Parole Board having the ability to direct a prisoner's release on a reintegration licence will result in significant additional direct costs on SPS. The Parole Board's decision to direct release on a reintegration licence, and the information they will need to inform that decision, will be part of the existing parole review process.

Costs on local authorities

141. As noted at paragraphs 129-131 above, the introduction of the reintegration licence for certain long-term prisoners will require Justice Social Work (JSW) to provide supervision support to individuals released on this licence. These will be individuals which JSW will supervise on their release on parole licence under existing arrangements but it could mean that more individuals are supervised for longer.

142. Based on the figures set out at paragraphs 136 and 137 above, the following estimated ranges of additional costs on local authorities (JSW) have been provided.

Table 6

Estimated number of individuals	Estimated additional Justice Social Work cost (annual)
All	£334,258
74 individuals	
50%	£167,129
37 individuals	

Costs on other bodies, individuals and businesses

143. It is not anticipated that the Parole Board's recommendation to release an individual on a reintegration licence where they have recommended release at PQD would result in additional costs for the Parole Board. This is because this decision would be taken within the existing parole review processes.

144. There may be some further costs for the Parole Board and the Scottish Government will work with the Parole Board to review any further additional costs arising from this.

SECTION 8 - POWER TO RELEASE EARLY

145. This provision would only have cost implication if the power was ever required to be used. The provision does not, in itself, have cost implications.

146. The precise costs of this power would depend on the circumstances and the parameters of any future release (for example, whether short-term prisoners were released who do not require statutory supervision, or whether long-term prisoners were included, who do require to be supervised on release).

Costs on the Scottish Administration

147. If exceptional circumstances which put the security and good order of prisons at risk arose in future which required the use of this power, SPS management would be involved in detailed analysis on the potential scale and scope of any release process, to define what measures would be proportionate to deliver the reduction in the prison population required to effectively mitigate those risks, and to maintain the safe operation of the prison system.

148. If the decision was made to implement a release, SPS staff would be required to expedite a significant amount of work to prepare and administer the release of the selected group of prisoners within a short timescale. While these tasks are part of the ordinary operation of prisons, resources may have to be allocated to this work to deliver the necessary workload in a compressed time period.

149. SPS staff would also be required to check information regarding each eligible prisoner, either to implement the Governor's veto measure, or to check for other eligibility measures or exclusions (depending on the specific measures set out for the specific release process) which may require a moderate expansion of the standard processes to prepare any prisoner for release. However, given that this is intended only to be applied as an emergency measure, any additional workload would be part of the wider activity necessary to address the circumstances at that time.

150. As when the emergency release power was used under the Coronavirus (Scotland) Act 2020 in May 2020, SPS would use an extension of the existing information-sharing process to inform local authorities across Scotland regarding the individuals involved, primarily to alert local housing services should the individual require accommodation on their release. Similarly, prison-based healthcare staff would expedite the usual notification process, and liaise with health boards to alert them where an individual had specific healthcare needs upon release.

151. The process to release prisoners under the 2020 Act resulted in an increase in release activity of around 50% over the usual prison release workload for the period (assessment of c450 cases, leading to early release of 348 individuals over 28 days). Given the eligibility criteria applied at that time (i.e. that only prisoners with sentences of less than 18 months, and with less than 3 months left to serve), the process compressed the workload of releasing those individuals into a short period.

152. However, this short-term increase in activity would have been balanced against a decrease in cases in the following two months (when those individuals would have ordinarily been released). As such, the early release process will have brought forward a number of activities that participating organisations would have been expected to provide at the prisoners' scheduled release date, rather than generating entirely new activities.

153. The operation of any early release process will form just one part of the ongoing operation of arrivals and releases of prisoners from the prison estate, and any change in work arrangements and effect on resources has to be seen in that context. It is not uncommon for more than a hundred prisoners to be released in a normal week, and so the scale of the May 2020 process (348 early releases over 28 days) has to be considered in that context.

154. SPS may incur additional staff costs for processing additional releases. This would be dependent on the format and scope the release process might take, which would affect the number of additional hours of staff time required and may increase payment rates for these hours (rather than requiring new staff to be appointed). This could be partially offset by freeing up staff resource in subsequent weeks as a result of there being less release activity underway.

155. The costs associated with routine prisoner release are already accounted for within the SPS budget. However, depending on the numbers that need to be processed, the timeframe for doing this and the associated process including risk assessment, staff may be required to work in excess of their contracted hours. It is not possible at this stage to predict in any detail what this might be as it would be dependent on the scope of any instances of emergency release under this power.

Costs on local authorities

156. Potential costs and savings to local authorities will be based upon the effect that an early release process would have on the delivery of statutory duties of local authorities.

157. The activities themselves would be required to be delivered at whatever point the relevant prisoner was released. As such, the effect of an early release process would be to concentrate release related activities within a shorter period of time (and any additional costs that might result from this) rather than the creation of new workload.

158. However, it would also have a secondary effect of reducing demand for such activity in the subsequent months (when the prisoners would have otherwise been released).

159. For example, in the May 2020 early release process, the eligibility criteria excluded any prisoners who would be subject to justice social work supervision after their release. This reflected the aim to restrict the release process to what was necessary and proportionate to deliver the necessary support to prison operations.

160. Hypothetically, if this approach was not taken, the specific costs to the local authority for the delivery of justice social work services would depend on the size and type of the cohort selected. For any prisoners required to be supervised by social work following their release, there

would be a need to expedite the preparations for those individuals, and an additional cost for delivering that supervision over the period until they would have been released ordinarily.

161. There may be an impact on demand on local authorities for the delivery of voluntary throughcare support to help short sentence prisoners reintegrate after release from prison. The scale of this change will vary widely, given that only a small minority of prison leavers choose to request this support, and the content of the services provided will vary between local authorities.

162. Local authority supported throughcare activity (whether mandatory or voluntary) is included in the activities funded by the Scottish Government under the annual community justice budget allocation. The decision on what and how much each local authority spends is for the local authority to decide.

Costs on other bodies, individuals and businesses

163. A high proportion of all prisoners will claim state benefits once they are released, and are more likely to be in severe poverty and reliant on benefits than the general population – including those that would be released from custody due to an early prisoner release process. As a result, it is likely that any cohort of prisoners that are released early will produce a cost to benefits services for the period between the dates of those prisoners release, and their initial scheduled release dates.

164. Given the separation between the data held by prison services, and benefits services, it is not practicable to calculate the specific cost of a particular cohort of individuals.

Costs associated with third sector support for prison leavers

165. There are a variety of third sector organisations that deliver services which offer voluntary support to individuals on release from prison.

166. The Scottish Government issues annual funding to two national offender throughcare services (plus a third specialist service), at a total of £3.7 million per year. These services have previously supported c2,000 individuals per year.

167. The early release process does not alter the overall number of individuals eligible for support from such services, but will require the service to be flexible enough to deal with the short-term increase in activity. As above, any short-term increase in certain aspects of workload caused by the early release process will be balanced by a medium-term reduction, when the early release cohort would have ordinarily been released.

SECTION 9 - DUTY TO ENGAGE IN RELEASE PLANNING

168. The Bill introduces a new duty for a number of partners to engage with pre-release planning for prisoners when requested to do so by the Scottish Ministers (as SPS). The partners identified for this pre-release planning duty listed in the Bill are: each local authority, each health board, the Chief Constable of the Police Service of Scotland, Skills Development Scotland and integration joint boards.

169. The duty also includes a requirement for the partners to consult with such third sector bodies involved in community justice as they consider appropriate in the delivery of their duty.

Costs on the Scottish Administration

170. This duty will apply with regards to pre-release planning for all prisoners, regardless of sentence length. SPS undertake an initial needs screening of all prisoners when they enter custody which would provide an initial, baseline assessment of needs. Thereafter, an individual's progression through the prison estate is managed via the Integrated Case Management System. This new duty is intended to align with that and to support a more proactive approach to pre-release planning, with community-based partners engaging at an earlier point in an individual's sentence. It is recognised that this engagement already happens in some areas and with some partners. This provision is intended to support consistency of approach across Scotland.

171. There may be some limited administrative costs for SPS associated with this in terms of establishing points of contact and updating IT systems to capture information about engagement with named partners in the release planning process. It is estimated that one-off costs of £300,000 would arise in updating SPS IT systems in the period ahead of commencement of the reforms (i.e. if commencement took place in January 2024, these costs would fall in 2023/24). These costs are based on recent experience of other similar system level changes.

Costs on local authorities

172. It is not anticipated that this duty will lead to significant additional costs for local authorities, although it may engage their wider duties to engage with individuals on their release from custody, across services for social work, housing and other wider services at an earlier point.

173. Under existing legislation, local authorities have a duty to provide support for people leaving prison. This is either under the statutory duty to engage with those individuals subject to social work supervision of parole conditions or post-release orders, or the duty to provide post-release support and guidance to other prison leavers at their request.

174. There are also the duties held by local authorities and other public services to provide universal services to individuals on release from custody as they would to any member of the public in their area – such as the prevention of homelessness.

175. The duty in this Bill enhances that by requiring them to engage at an earlier point in an individual's sentence, if asked to do so by the SPS. It does not ask local authorities to provide additional services for people leaving prison, but for them to engage in that planning process at an earlier point so that more proactive plans to support an individual on release can be put in place to better support their reintegration.

176. While the development of more proactive plans may increase demand for provision of services, this may also lead to some efficiency savings by helping to reduce the need for emergency support for those whose release is not planned for and by reducing the risk of reoffending by informing the provision of support post-release.

Costs on other bodies, individuals and businesses

177. As with local authorities, it is not anticipated that this provision will place significant additional resource requirements on other bodies, individuals and businesses. This duty does not require the named partners to provide additional services to those they already offer for people leaving prison, or which they would offer to any appropriate member of the public. It places a duty on them to engage at an earlier point in an individual's sentence.

178. As noted above, an earlier and more effective planning process may result in more individuals being identified who are entitled to receive support, but should also create the opportunity for their needs to be met in a more effective manner, reducing the demand for urgent support upon release, or reducing the numbers of individuals in crisis calling upon emergency services.

179. The potential for improved planning and co-ordination should also enable third and voluntary sector services to plan for their provision of wider services more effectively, and achieve better outcomes overall. The operation and co-ordination of services will be guided by the development of robust and consistent standards for the operation of throughcare, as discussed below.

SECTION 10 - THROUGH-CARE SUPPORT

180. The Bill places a duty on the Scottish Ministers to publish standards on the operation of the various organisations and services that contribute to the throughcare process which is to be provided to people remanded in custody or serving a custodial sentence before, during and after their release from prison.

181. Linked to this, the Bill places a duty on the following bodies to adhere to the standards - each local authority, each health board, Skills Development Scotland, integration joint boards, and the Scottish Ministers.

182. These throughcare standards are intended to encourage consistency in the provision of throughcare support for people leaving prison, linking to existing statutory duties in this area and the existing responsibilities of Community Justice Partners and Community Planning Partners.

Costs on the Scottish Administration

183. Additional Scottish Government staff time will be needed to co-ordinate the development of the national throughcare support standards; prepare a draft; manage a consultation process and assessment of responses; publish the document; and keep the standards under review. Based on work already being done by Scottish Government officials in relation to the co-ordination and support for throughcare and reintegration policy, average costs for a team leader and policy manager have been used to estimate costs for Scottish Government. It should be noted that this work will be undertaken within existing staff resource. Assessment of the required staff resource to develop the first national throughcare support standards and deliver related work is 20% of a team leader (total annual salary with on costs is £79,219, 20% of which is £15,844) and 20% of a policy manager (total annual salary with on costs is £60,221, 20% of which is £12,044) in year 1.

The total cost is therefore £27,888. Staff costs in subsequent years would average at 5% of the cost of the same team, meaning a cost of £6,972 based on current pay levels.

Costs on local authorities

184. As these standards are intended to build on existing statutory duties in this area and the existing responsibilities of Community Justice Partners and Community Planning Partners. It is not anticipated that this will lead to significant additional costs for local authorities. The Scottish Government will engage closely with COSLA during the Bill's passage and during planning for implementation to keep this under review.

Costs on other bodies, individuals and businesses

185. The Third Sector plays a critical role in the provision of throughcare support. The Scottish Government issues annual funding to two national offender throughcare services (plus a third specialist service), at a total of £3.7 million per year. These services have previously supported c2,000 individuals per year.

186. These services provide support to men leaving short-term sentences, and women leaving short-term sentences (as well as women leaving remand, and women on certain community sentences referred by Justice Social Work), who are not already under the supervision of Justice Social Work after their release. There is currently no national voluntary sector service to support men leaving remand.

187. As noted above, the national throughcare standards established under this Bill will include a focus on both remand and sentenced prisoners.

188. It will be important that the expertise and experience of the third sector continues to inform the provision of voluntary throughcare support services in future. Community Justice Scotland (CJS) will lead in the commissioning of third sector voluntary throughcare services from 2023/24 onwards, with funding for these services continuing to be provided by the Scottish Government.

189. As part of this work, it has been agreed that planning for future service provision should also include careful consideration of the development of a throughcare service for male prisoners leaving remand. The Scottish Government and CJS will work together to determine any additional costs for such a service in the future.

SECTION 11 - PROVISION OF INFORMATION TO VICTIM SUPPORT ORGANISATIONS

190. Section 11 will amend the Criminal Justice (Scotland) Act 2003 and the Victims and Witnesses (Scotland) Act 2014 so that information about prisoners, which can be provided to victims of the offences they have committed, can also be provided to "victim support organisations" providing assistance to those victims.

Costs on the Scottish Administration

191. It is not anticipated that this change will result in additional costs for the Scottish Prison Service (SPS). There are existing processes to share information with victims registered with the Victim Notification Scheme (VNS) and the provision of information to Victim Support Organisations (VSOs) permitted under section 13 of this Bill will be undertaken via these processes.

192. The SPS registration process is well established. Should the Bill result in greater awareness of the VNS prompting more victims to register under the existing processes, the Scottish Government would not expect there to be significant resource implications for SPS as the current registration processes will remain fit for purpose.

Costs on local authorities

193. It is not anticipated that there will be additional costs for local authorities as a result of this provision. This is because there is not a direct role for local authorities in this process. This involves Scottish Prison Service and the Victim Support Organisations.

Costs on other bodies, individuals and businesses

194. VSOs currently receive £16m funding p.a. from the Victim Centred Approach Fund (VCAF). This includes funding to support the direct provision of advice and support to victims of crime.

195. The Scottish Government has approached a number of VSOs to explore the resource implications of these provisions. It understands that the impact of the provisions may depend on the particular type of support provided and the point in time at which that support is made available to the victim. However, notwithstanding the scope for a differential impact across VSOs based on those points, the Scottish Government understands that the provisions will not change the fundamental nature of the service VSOs provide to victims.

196. Some administrative changes for VSOs may be required to allow them to develop guidance for staff and to put in place processes to request, receive and process information relating to prisoner release; similarly, staffing may require consideration. The Scottish Government will work collaboratively with the VSOs to identify any associated costs as part of wider consideration of future budgets.

197. As part of the Scottish Government's work in considering the data protection implications of this Bill, it has developed a Data Protection Impact Assessment. That assessment explains that it is the intention that a data sharing agreement will be put in place between SPS and VSOs to support the new scheme by which they will be able to request, receive and process information relating to prisoner release.

198. The Scottish Government expects that this data sharing agreement will support VSOs in developing their own internal guidance and processes and may enable costs in this area to be kept to a minimum.

SUMMARY OF COSTS

199. The table below summarises the costs outlined in this Financial Memorandum. Decisions about the implementation of the Act will be taken in due course. For the purposes of this Financial Memorandum and estimating the time when the financial impact of the Act will arise, it is assumed implementation will take place on 1 April 2024.

Table 7

Sections 1 to 5 Bail			
Scottish Administration			
Falling on	Nature of costs	One off	Recurring annually from 2024-2025 onwards
Crown Office and Prosecution Service	Training and guidance	Minimal	None
Scottish Courts and Tribunals Service	Potential increase in court time	None	£700,000
Scottish Courts and Tribunals Service	Changes to IT systems	Up to £100,000	None
Scottish Courts and Tribunals Service	Additional recording requirements	None	£41,405
Local Authorities			
Justice Social Work Services	Providing additional information to inform bail hearings if requested by court	None	£2,512,000
Bail Total		Up to £100,000	£3,253,405

Table 8

Sections 6 to 11 Reforms to release from custody mechanisms			
Scottish Administration			
Falling on	Nature of cost	One off	Recurring annually from 2024-25
SPS	Changes to IT system	Estimated £600,000 total. £300,000 to ensure automatic change of release date if on Friday or day before public holiday. £300,000 for updating IT systems to capture information relevant to the release planning process.	-
SPS	Training costs for new Reintegration Licence	£250,000	
SPS	Increased cost for Prison Based Social Work to support assessment of long-term prisoners for release on Reintegration Licence	-	£245,000-£490,000
Scottish Government	Increased electronic monitoring requirement for Reintegration Licence	-	Estimated costs for the two approaches will be dependent on numbers released and are between: a) In advance of the Parole Board's consideration of a prisoner at PQD (or subsequent review if not released at PQD) £53,312 -£213,248

			<p>b) Following the Parole Board's recommendation to release at long-term prisoner at PQD</p> <p>£56,358 - £112,716</p>
Local Authorities			
Falling on	Nature of Cost	One Off	Recurring annually from 2024/25
Justice Social Work Services	Additional supervision and support for long-term prisoners released on Reintegration licence	-	<p>Costs will be dependent on number released estimated costs of between</p> <p>a) In advance of the Parole Board's consideration of a prisoner at PQD (or subsequent review if not released at PQD)</p> <p>£158,095- £632,380</p> <p>b) Following the Parole Board's recommendation to release a long-term prisoner at PQD</p> <p>£167,129 - £334,258</p>
Other bodies, individuals and businesses			
Falling on	Nature of cost	One off	Recurring – annually from 2024/25
Parole Board for Scotland	Training costs for role in providing view for Scottish Ministers on release on Reintegration licence	£24,000	-

This document relates to the Bail and Release from Custody (Scotland) Bill (SP Bill 16) as introduced in the Scottish Parliament on 8 June 2022

Parole Board for Scotland	Additional member costs to assess cases considered for release on Reintegration licence	-	Estimated ranges are: £31,500 to £126,000
Release Total		Up to £874,000	Up to £1,908,602
Bill Total		Up to £974,000	Up to £5,162,007

This document relates to the Bail and Release from Custody (Scotland) Bill (SP Bill 16) as introduced in the Scottish Parliament on 8 June 2022

BAIL AND RELEASE FROM CUSTODY (SCOTLAND) BILL

FINANCIAL MEMORANDUM

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