

CORONAVIRUS (RECOVERY AND REFORM) (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 Coronavirus (Recovery and Reform) (Scotland) Bill (“the Bill”), introduced in the Scottish Parliament on 25 January 2022.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 9-EN);
 - a Policy Memorandum (SP Bill 9-PM);
 - a Delegated Powers Memorandum (SP Bill 9-DPM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 9-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.

BACKGROUND

4. The purpose of the Bill is to embed reforms in Scotland’s public services and justice system that, though necessitated by the Covid¹ pandemic, have delivered improvements for service users and improved efficiency. The Bill will also help build resilience against future public health threats. Furthermore, the Bill will continue certain temporary justice system provisions on a longer extension basis as part of the Recover, Renew, Transform (“RRT”²) programme and as a response to the impact of Covid on Scotland’s justice system, most particularly where backlogs have unavoidably built up. The provisions contained within the Bill demonstrate the Scottish Government’s openness to making legislative reforms that can help respond to the Covid pandemic and support the country’s recovery ambitions. This is a non-emergency Bill following on from a full, 12-week public consultation.

¹ Covid refers to COVID-19, the disease caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2)

² [Justice - vision and priorities: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2020/12/Justice-vision-and-priorities-report-2020-21.pdf)

5. Further information about the background and the policy intention behind the Bill and also about the existing temporary Covid legislation is set out in the Policy Memorandum which accompanies the Bill.

6. This Financial Memorandum provides information about costs and savings where this is possible in relation to each of the specific provisions included in the Bill. For a number of the Bill's provisions, there are no specific costs and savings which have been identified. For some provisions, including in relation to Public Health and Educational establishments, costs will not arise unless the regulation making powers that the Bill provides for require to be used.

7. In relation to savings, some specific savings have been identified, for example, in relation to electronic registration of deeds. Furthermore, many of the Bill's provisions identify relatively small savings and efficiencies to public bodies and service users arising from virtual or remote activity, which are not all quantified but may bring significant combined savings across the public sector.

8. A summary of the costs and savings is included at the end of this Financial Memorandum.

PUBLIC HEALTH PROTECTION

Modifications of the Public Health Etc. (Scotland) Act 2008

9. These provisions allow Scottish Ministers to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Scotland. The Scottish Ministers may, in those regulations, confer functions on bodies such as local authorities and health boards as a means of achieving the above purpose. In addition a power to confer functions on local authorities, health boards and other persons in relation to monitoring public health risks is included to allow other bodies to carry out ongoing monitoring of infectious diseases which may later become a significant threat to public health. Currently, Scottish Ministers have similar powers through the Coronavirus Act 2020 ("the UK Act"); these only apply in relation to Covid and are set to expire in March 2022, unless extended via secondary legislation with the agreement of the Scottish Parliament. The provisions in the Bill will apply in relation to all infectious diseases or contaminants which pose a significant risk to public health.

Costs on the Scottish Administration

10. These provisions provide Scottish Ministers with the powers to make regulations, and those regulations could entail a range of costs and savings for the Scottish Administration. However, as the provisions themselves are purely enabling powers, they do not result in direct costs or savings to the Scottish Administration.

11. Direct costs or savings, including the impact of the discretionary power to make incentive payments, pay compensation or expenses, or to levy charges or fines, will be

wholly dependent on the content of the regulations. This content in turn will depend on, amongst other things, the nature of the threat faced; the actions considered necessary to respond to it; and the potential consequences of failing to mount an effective response.

12. The nature of a potential threat is not specified in the Bill provisions, beyond that it would be an infection or contaminant that presents or could present a significant harm to human health. The examples here are provided for illustrative purposes only, as the provisions are expressly intended to allow Scottish Ministers to respond to unknown and potentially unforeseen threats. However, such a threat could include a future pandemic; an outbreak of a high consequence infectious disease; or contamination following a large scale industrial accident.

13. Although the regulation-making powers are intended for use in a scenario that requires some degree of national coordination, it does not necessarily follow that the threat could not be limited to a single area – for example, a localised outbreak or environmental hazard. Therefore, while there may be similarities in the response to each of these threats, the responses will by necessity hinge upon the threat itself and the scale of the action needed to manage it. Although as before, the examples here are purely illustrative, such responses could encompass some of the measures implemented during Covid, which have ranged from mask wearing to “stay at home” requirements, or they could involve entirely new measures, such as limiting access to areas of contamination.

14. This flexibility is a key strength of the provisions. However, it also means it is impossible to set out with any certainty what regulations enacted using them would entail, and therefore no cost estimates have been included here. Financial implications would be considered at the time that regulations were being prepared and those considerations put before Parliament as part of the scrutiny process when any regulations are laid.

Costs on Local Authorities

15. These provisions provide Scottish Ministers with the powers to make regulations, and those regulations could entail a range of costs and savings for local authorities. However, as the provisions themselves are purely enabling powers, they do not result in direct costs or savings to local authorities.

16. Direct costs or savings, including the impact of the discretionary power to make incentive payments, pay compensation or expenses, or to levy charges or fines, will be wholly dependent on the content of the regulations. This content in turn will depend on, amongst other things, the nature of the threat faced; the actions considered necessary to respond to it; and the potential consequences of failing to mount an effective response.

17. The same considerations also apply to any monitoring functions that Scottish Ministers may confer on local authorities. The implications for monitoring activity at the height of a pandemic could, for example, be vastly different from the implications of monitoring a potential contaminant.

18. For the reasons given in the previous section, it is therefore not possible to set out with any certainty what regulations enacted using these powers to respond to unknown future public health threats would entail, and therefore no cost estimates have been included here.

19. Financial implications would be considered at the time that regulations were being prepared and those considerations put before Parliament as part of the scrutiny process when any regulations are laid.

Costs on other Bodies, Individuals and Businesses

20. These provisions provide Scottish Ministers with the powers to make regulations, and those regulations could entail a range of costs and savings for other bodies, individuals and businesses. However, as the provisions themselves are purely enabling powers, they do not result in direct costs or savings.

21. Direct costs or savings, including the impact of the discretionary power to make incentive payments, pay compensation or expenses, or to levy charges or fines, will be wholly dependent on the content of the regulations. This content in turn will depend on, amongst other things, the nature of the threat faced; the actions considered necessary to respond to it; and the potential consequences of failing to mount an effective response.

22. The same considerations also apply to any monitoring functions that Ministers may confer on other bodies. The implications for monitoring activity at the height of a pandemic could, for example, be vastly different from the implications of monitoring a potential contaminant.

23. For the reasons given in the first section, it is therefore not possible to set out with any certainty what regulations enacted using these powers to respond to unknown future public health threats would entail, and therefore no cost estimates have been included here.

24. Financial implications would be considered at the time that regulations were being prepared and those considerations put before Parliament as part of the scrutiny process when any regulations are laid.

Arrangements for vaccination and immunisation

25. The provision is to make permanent the removal of the restriction within section 40 of the National Health Service (Scotland) Act 1978 on vaccinations and immunisations being carried out by doctors or persons acting under their direction and control.

26. The purpose of this provision is to allow a wider range of health staff to administer vaccinations and immunisations (in accordance with existing regulatory provisions about the administration of vaccines in the Human Medicines Regulations 2012) in order to make it easier to quickly protect the population from infectious diseases and deliver vaccination and immunisation programmes at scale.

27. There is currently a requirement set out in the National Health Service (Scotland) Act 1978 which provides that vaccinations and immunisations must be administered by medical practitioners or persons acting under their direction and control. This requirement was modified temporarily by the UK Act. The proposal is now to make that modification permanent.

Costs on the Scottish Administration

28. There will be no costs on the Scottish Administration: there could be a financial saving from removing the requirement for vaccinations to be provided under the control or direction of a general medical practitioner as the cost of having general medical practitioners involved in a vaccination programme where they add no value other than to comply with the requirement will be removed.

Costs on Local Authorities

29. There will be no costs on the local authorities: vaccination programmes are wholly resourced by the Scottish Government.

Costs on other Bodies, Individuals and Businesses

30. There will be no costs on other bodies, individuals and businesses; Scottish Government provides for people to be vaccinated people free of charge.

EDUCATION

Educational establishments etc.

31. These provisions are to ensure that the Scottish Ministers have powers at their disposal in relation to educational establishments to enable them to take necessary and appropriate action to protect public health and ensure the continuity of educational provision, and mitigate against some of the wider harms. These powers are subject to safeguards to ensure that they are used only when necessary, and in a proportionate manner. The provisions apply to all types of schools (i.e. public, grant-aided and independent schools), early learning and childcare settings, out of school care settings, and higher education and further education institutions.

Costs on the Scottish Administration

32. There are no immediate costs to the Scottish Administration from these provisions. It is not possible to predict the nature and impact of a future public health emergency or pandemic. The following information is based on experience of the Covid pandemic but much will depend on the prevailing circumstances at such time as these powers are used.

33. In the event of a future public health emergency where actions are needed, for example, to limit the spread of infection, and ensure the continuity of education, this may expose the Scottish Administration to significant costs. The costs incurred will vary depending on the extent, purpose and duration of any provisions used.

34. If regulations were issued in regard to schools, the Scottish Administration may incur varying costs in the following areas:

- Support to local authorities to provide free school meals provision to entitled pupils who are not able to attend school in-person;
- Support for local authorities to provide remote learning provision, additional teaching staff and support for families;
- Support for additional health protection measures or mitigations, for example monitoring and improving ventilation in schools.

35. If provisions were used in regard to one or more further or higher education institutions, the Scottish Administration may incur varying costs in the following areas:

- Financial support for running costs related to the pandemic, such as the adaptation of estates to meet public health requirements, loss of income from student accommodation, financial support for digital learning provision in periods of blended or online only learning and support related to disruption of academic courses;
- Direct financial support for students to support living costs and to provide wellbeing or mental health support. Further information on the range of support made available to students during the Covid pandemic is available here³.
- Support provided during the Covid pandemic to schools and further and higher education institutions has enabled remote learning provision to be put in place throughout the education sector, supporting a flexible approach going forward and reducing disruption, depending on the impact and levels of any future restrictions.

36. If provisions were used in relation to regulated childcare services - day care of children services and childminding services - in the event of a future pandemic, the Scottish Administration may incur varying costs. The actual costs incurred will vary dependent on the particular terms of the provisions used, but the Scottish Administration may incur costs in providing financial support to regulated childcare services in order to allow them to operate in line with any regulations, guidance or advice.

37. Additional financial support may also be provided to local authorities to support regulated childcare providers to meet ongoing costs relating to measures required to mitigate the impacts of the pandemic.

38. Further information on the range of support made available during the Covid pandemic to date to the regulated childcare sector is set out in the Financial Sustainability Health Check of the Childcare Sector in Scotland⁴ which was published on 31 August 2021.

³ [Support for students impacted by Covid - gov.scot \(www.gov.scot\)](https://www.gov.scot/support-for-students-impacted-by-covid)

⁴ [Financial sustainability health check of the childcare sector in Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/financial-sustainability-health-check-of-the-childcare-sector-in-scotland)

39. This support was focused on mitigating the financial impacts on childcare services who had to close, or operate with substantially reduced capacity and income. These services will still have cost pressures to meet and, dependent on the nature of the provisions used, may incur additional costs.

Costs on Local Authorities

40. The use of the provisions to restrict access to or close educational establishments and to ensure the continuity of education is likely to expose local authorities to costs, if exercised. The costs incurred will vary dependent on the particular terms of any regulations, guidance or advice issued.

41. In relation to schools, local authorities are likely to face costs resulting from disruption due to redeployment of staff from other duties and reshaping of service delivery to support the response to any public health emergency.

42. In relation to regulated childcare, previous use of provisions under the UK Act, the power during the Covid pandemic resulted in agreement to the redirection of an estimated £25-£30 million of Scottish Government funding by local authorities to mitigate the impacts of the pandemic and provide critical childcare to children.

43. In relation to further and higher education, on the basis of currently available information, we do not believe that this legislation will present any costs for local authorities.

Costs on other Bodies, Individuals and Businesses

44. The use of the provisions to ensure the continuity of education, if exercised, is likely to expose the independent schools sector and private, third and childminding childcare sector to costs. The costs incurred will vary depending on the particular terms of any regulations, guidance or advice issued, and the impacts will vary across different types of independent school and regulated childcare providers, including whether or not such providers deliver the funded early learning and childcare entitlement or, for example, are expected to continue provision to vulnerable children.

45. Previous use of provisions under the UK Act, and the public health guidance for the regulated childcare sector that followed, resulted in additional costs for the private, third and childminding services in the childcare sector. As highlighted above, the evidence from the Financial Sustainability Health Check of the Childcare Sector indicated that during the Covid pandemic these services, in general, experienced higher delivery costs in order to meet public health guidance requirements (in particular due to additional cleaning costs, purchase of PPE, and working with smaller cohorts of children which increased staffing requirements), and a loss of income from private sources (both from lower demand and having to operate at lower capacity levels at times to meet the requirements of the public health guidance). The nature and scale of these additional costs and impacts varied across different types of services. For example, childminding services reported lower rates of change in average delivery costs than day care of children services. Those services that are

most reliant on income from private sources – school age childcare services and some childminding services – were most likely to report larger decline in income and demand. Further details are provided in the Financial Sustainability Health Check of the Childcare Sector.

46. In relation to the independent schools sector, restrictions placed upon them under these provisions may come with significant costs due to a loss of income from fees, if these have to be reduced for remote learning, and in the case of those with boarding school accommodation, costs derived from providing additional care to boarders unable to return home and loss of fees for boarders not taking up their places.

47. If the provisions are used in regard to one or more further or higher education institution the institutions may incur varying costs in the following areas:

- Running costs related to the pandemic, such as the adaptation of estates to meet public health requirements, loss of income from student accommodation and financial support to support digital learning provision in periods of blended or online only learning;
- Direct financial support for students to support living costs and to provide wellbeing or mental health support.

48. Although the scope of the powers being sought are such that they could be implemented in different ways, as circumstances demand them, in considering the likely impacts of this legislation, the Advanced Learning and Science Directorate drew upon available information from the current Covid pandemic. The view is that the restrictions placed upon further and higher education institutions during the Covid pandemic have had a financial impact on institutions, although there is limited evidence available on the direct financial impact of Covid on the sectors. For example, figures published by the Scottish Funding Council⁵ indicate that the further education sector is forecasting an adjusted operating deficit of £9.2 million in 2019-20 and an adjusted operating deficit of £15.3 million for 2020-21, while universities are forecasting a deficit £176.1 million in 2020-21.

School consultations

49. The purpose of these provisions is to allow local authorities to hold the public meetings required under the Schools (Consultation) (Scotland) Act 2010 as wholly virtual meetings where, due to a public health emergency, it would be otherwise unsafe to hold such a meeting in-person. These provisions do not place any new requirements on local authorities as the duty to hold a public meeting is an existing statutory obligation on local authorities.

Costs on the Scottish Administration

50. There are no immediate costs to the Scottish Administration arising from the provisions. In the event of a future public health emergency, where local authorities request from Scottish Ministers an exemption from holding in-person public meetings under the

⁵ [The Financial Sustainability of Colleges and Universities in Scotland – Review Report](#)

Schools (Consultation) (Scotland) Act 2010, some staff resource will be required to consider such requests, but it is expected that this will be met from existing workforce resource and no additional costs will arise.

Costs on Local Authorities

51. There are no immediate costs to local authorities arising from the provisions. Any additional costs of holding such meetings wholly virtually would be expected to be minimal and potentially offset by cost savings as local authority officers may not have to hire venues or incur travel costs to attend the events.

Costs on other Bodies, Individuals and Businesses

52. There are no immediate costs for other bodies, individuals and businesses arising from the provisions. The expectation is that any other bodies, individuals or businesses that wish to engage in a public meeting required under the Schools (Consultation) (Scotland) Act 2010 will not face any additional costs and may see savings due to not having to pay travel costs to attend such meetings.

PUBLIC SERVICE REFORM

Online meetings and hearings

Bankruptcy: remote meetings of creditors

53. The provision provides for greater use of technology in bankruptcy procedures by enabling meetings of creditors to take place by virtual means rather than in a physical environment.

Costs on the Scottish Administration

54. These provisions will result in no additional direct costs or savings to the Scottish Administration.

Costs on Local Authorities

55. Although these provisions will result in no additional direct costs to local authorities, they could create some savings in administration costs. In relation to local authorities' role as creditors, the reduction in administration costs in bankruptcy proceedings through the facility for virtual meetings in favour of physical meetings, where they are deemed to be required, may deliver a marginal increase in the funds ultimately available to creditors. The ability to attend meetings of creditors by virtual means may also deliver marginal savings in terms of staff time and travel costs. In total these potential savings are estimated to be very small in financial value, as meetings of creditors are fairly infrequent.

Costs on other Bodies, Individuals and Businesses

56. These provisions will result in no direct costs or savings to other bodies, individuals and businesses. The reduction in administration costs in bankruptcy proceedings through the facility for virtual meetings in favour of physical meetings may deliver a marginal increase in the funds ultimately available to creditors. The ability to attend meetings of creditors by virtual means may also deliver marginal savings in terms of staff time and travel costs.

Civic licensing: how hearings may be held

57. Various activities are licensed under the Civic Government (Scotland) Act 1982 (“the 1982 Act”). Parts I and II of the 1982 Act make provision for the licensing by licensing authorities of a range of activities, including taxis and private hire cars, public entertainment and knife dealers. The “licensing authority” is the local authority within whose area the activity is, or is to be, carried on. Part III makes provision for the control of sex shops and licensing of sexual entertainment venues by local authorities. Before reaching certain decisions, the licensing or local authority (as the case may be) is required by the 1982 Act to give various persons – including the applicant/ licence holder – the opportunity to be heard.

58. These provisions will continue to provide licensing authorities with the flexibility, first introduced by the Coronavirus (Scotland) Act 2020 (“the first Scottish Act”), to exercise their discretion to be able to hold remote hearings where they consider it appropriate. Remote hearings are hearings with live/real time participation (for example by telephone conference or video conference) by licensing authority members, applicants and objectors and others entitled to formally speak at a hearing.

Costs on the Scottish Administration

59. Making the remote hearing provisions permanent will result in no direct costs or savings to the Scottish Administration.

Costs on Local Authorities

60. The provisions do not require that a hearing is held remotely but make clear that licensing authorities have the option as to whether a hearing is held in person, remotely or in a hybrid format. Feedback from local authorities confirmed that no detailed analysis of the impact on costs of remote hearings for held by licensing authorities was currently available.

Costs on Other Bodies, Individuals and Businesses

61. Individuals who are already users of the civic licensing system and thus hold for example a taxi or private hire car licence or individuals who wish to apply for a new licence (for example a public entertainment licence) may benefit where a licensing authority exercises its discretion to hold a remote hearing. In rural areas for example where individuals

may have to travel some distance to attend a licensing authority hearing then the individual will save on travel costs if a hearing is held remotely. Should an individual choose to employ a licensing solicitor to represent them at a hearing then a hearing held remotely will also result in a saving on travel costs for the applicant's agent (and therefore a reduction in the applicant's legal costs). It is challenging to provide any meaningful estimate of likely efficiencies here given a number of unknown factors. For example, data about what an applicant's (and, as necessary, their legal agent's) travel costs might be is not available and nor is it possible to estimate how many remote hearings each licensing authority may elect to hold but at an individual level the savings involved are likely to be modest.

Alcohol licensing: how hearings may be held

62. Alcohol licensing is administered by licensing boards. Among other matters, licensing boards make decisions in relation to applications for new licences and on changes to existing licences – such as variation of the licence or revocation of the licence. Before reaching certain decisions boards are required to hold a hearing. In other cases they have the option of holding a hearing.

63. These provisions will continue to provide licensing boards with the flexibility, first introduced by the first Scottish Act, to exercise their discretion to be able to hold remote hearings where they consider it appropriate.

64. Remote hearings are hearings with live/real time participation (for example by telephone conference or video conference) by board members, applicants and objectors and others entitled to formally speak at a hearing. The provisions do not require that a hearing is held remotely but make clear that licensing boards have the option as to whether a hearing is held in person, remotely or in a hybrid format. Similar provision is made in respect of meetings of licensing boards.

Costs on the Scottish Administration

65. Making the remote hearings provision permanent will result in no direct costs or savings to the Scottish Administration.

Costs on Local Authorities

66. The provisions do not require that a hearing is held remotely but make clear that licensing boards have the option as to whether a hearing is held in person, remotely or in a hybrid format. Feedback from local authorities confirmed that no detailed analysis of the impact on costs of remote hearings for licensing boards was currently available.

Costs on Other Bodies, Individuals and Businesses

67. Individuals who are already users of the licensing system and thus hold an alcohol licence or individuals who wish to apply for an alcohol licence may benefit where a licensing board exercises its discretion to hold a remote hearing. In rural areas for example where individuals may have to travel some distance to attend a licensing board hearing then

the individual will save on travel costs if a hearing is held remotely. Should an individual choose to employ a licensing solicitor to represent them at a hearing then a hearing held remotely will also result in a saving on travel costs for the applicant's agent (and therefore a reduction in the applicant's legal costs). It is challenging to provide any meaningful estimate of likely efficiencies here given a number of unknown factors. For example, data about what an applicant's (and, as necessary, their legal agent's) travel costs might be is not available and nor is it possible to estimate how many remote hearings each licensing board may elect to hold but at an individual level the savings involved are likely to be modest.

Requirements of writing: Disapplication of physical presence requirements

68. This provision will allow Scottish notaries public, solicitors or advocates to provide specific legal services such as the taking or administering of oaths, affirmations or declarations, and the execution of certain documents, without being in the physical presence of those seeking such legal services.

69. This a departure from the position prior to the Coronavirus (Scotland) (No.2) Act 2020 ("the second Scottish Act") where such legal services, guided by their professional bodies, did require to be carried out by those legal professionals in the physical presence of those requiring them.

Costs on the Scottish Administration

70. Making these provisions permanent will result in no direct costs or savings to the Scottish Administration.

Costs on Local Authorities

71. Making these provisions permanent will result in no direct costs or savings to local authorities.

Costs on Other Bodies, Individuals and Businesses

72. The Law Society of Scotland has set out guidance to its members in relation to the use of these provisions, and so any future costs to regulatory bodies, may be expected to be limited to minimal administrative costs (borne by their existing operational funds). There may be potential for savings to individuals and businesses in relation to associated travel costs as a result of the provisions removing the requirement for "physical presence", though such savings are expected to be minimal. The provisions would place no obligation on Scottish notaries public, solicitors or advocates to facilitate such services by remote means, or to invest in equipment with which to do so. The provisions simply provide the option and flexibility to those legal professionals who do wish to offer to delivery of such services in this manner.

Custody at police stations: Custody officers' functions

73. These provisions enable the Scottish Ministers to make arrangements for Prisoner Custody Officers (PCOs) to carry out their functions within police stations for the purpose of facilitating the appearance before a court by electronic means of prisoners in police custody. This will involve prisoners appearing before the court by video link from police stations.

Costs on the Scottish Administration

74. PCOs are required to facilitate the escort of detained persons and prisoners between relevant premises, including police stations, courts, prisons and hospitals. These officers are also responsible for ensuring the custody of detained persons while they on court premises, or temporarily away from prison. The statutory duties, as provided in section 102(2) of the Criminal Justice and Public Order Act 1994, are provided for through a contract which is managed by the Scottish Prison Service ("SPS").

75. This contract, the 'Scottish Court Custody and Prison Escort Service' (SCCPES) includes a fixed monthly fee and a number of variable elements that are volume dependent, including court buildings, court rooms and routes operated. The agreement allows for the redeployment of PCOs to police stations and is expected to remain cost neutral during the period of the contract.

76. Police Officers and other police staff had previously facilitated the appearance of custodies at court via video links across 11 custody centres before these provisions were enacted. It was assessed that around three officers per site were required to support this and was estimated to cost around £37,000 per week; this continues to be offset through the use of the existing PCO contract. The expiry of these provisions would require the redeployment and return of police officers and other police staff to service the remote custody centres.

77. The impact on the Scottish Courts and Tribunals Service (SCTS) is expected to be largely cost neutral overall. The decrease in physical custody hearings enabled by this provision is unlikely to deliver any measurable cashable savings because the administrative and resource demands for SCTS do not differ significantly as a result of the virtual appearance by the accused. While an increase in virtual courts does offer an opportunity for organising business in a more efficient way, any efficiencies gained will be offset by demands on buildings and staff for other activity as court business starts to increase both virtually and physically where appropriate.

78. Similarly, the impact to the Crown Office and Procurator Fiscal Service (COPFS) is expected to be neutral. Prosecution staff will still be required to attend custody hearings, but is likely to be done remotely unless the fiscal is already in attendance at court for other business.

Costs on Local Authorities

79. Making these provisions permanent will result in no direct costs or savings to local authorities.

Costs on other Bodies, Individuals and Businesses

80. There are likely to be some costs to businesses running the Prisoner Escort contract for the training and support of PCOs to be deployed within police stations; however, it is expected that the costs of this will continue to be met from the existing contract with the SPS.

Communicating by phone or online

Bankruptcy: service of documents

81. The provision provides for greater use of technology in bankruptcy procedures by enabling documents required during bankruptcy administration to be transmitted to a person electronically.

Costs on the Scottish Administration

82. The provision will result in no additional direct costs or savings to the Scottish Administration.

Costs on local authorities

83. Although the provision will result in no additional direct costs to local authorities, there may be some savings in administration costs. In relation to local authorities' role as a creditor, the reduction in administration costs in bankruptcy proceedings through the facility for electronic service of documents may deliver an increase in the funds ultimately available to creditors. The ability to communicate with trustees in bankruptcy through electronic means in favour of paper communication may also deliver marginal costs savings in terms of stationery and postage.

Costs on other Bodies, Individuals and Businesses

84. Although these provisions will result in no additional direct costs to other bodies, individuals and businesses, there may be some savings in administration costs. The reduction in administration costs in bankruptcy proceedings through the facility for electronic service of documents may deliver an increase in the funds ultimately available to creditors. The ability to communicate with trustees in bankruptcy through electronic means in favour of paper communication may also deliver marginal costs savings in terms of stationery and postage.

Registration of births and Registration of deaths

85. These provisions are to enable registration of births and deaths by fully remote means across Scotland. However, registration of births and deaths will also be able to be carried out by in-person attendance at a local authority registration office.

Costs and savings to the Scottish Administration

One-off

86. **IT.** National Records of Scotland (NRS) operate an IT system known as FER (Forward Electronic Registration) which is used both by local authority registrars and by NRS staff to enter and manage registration data. Usually, changes to registration procedures impact on FER and so costs arise. However, in relation to remote birth and death registration, the local authority registrar will input the same information into the system: all that will change is how this information is collected in the first place. Therefore, there are nil IT costs arising.

87. **Registrars' handbook.** NRS maintain a handbook for registrars on practice in relation to registration. This will need to be updated to reflect the introduction of remote birth and death registration. However, this work is straightforward; the handbook is already updated quarterly and can be done by existing staff within existing resources. Therefore, there are nil costs arising in relation to the registrars' handbook.

88. **Guidance for registrars on how to configure services.** Linked to work on the handbook, NRS will need to produce guidance for local authorities on configuring their birth and death registration services once remote birth registration is introduced and remote death registration is introduced permanently. However, this is likely to be straightforward and can build on guidance developed for the temporary introduction of remote death and still-birth registration via the UK Act. It will need to describe how remote birth and death registration will work; say that in-person birth and death registration should continue to be available across Scotland; and that rural authorities may potentially find remote birth and death registration more useful than urban authorities. As this work looks straightforward, it can again be done by existing staff within existing resources. Therefore, there are nil costs arising in relation to guidance for registrars. There are also nil costs arising for any directions given by NRS to local authorities on the detail of how remote birth and death registration services will run as this work too can be done by existing staff within existing resources.

89. **Public-facing guidance.** NRS will need to produce public-facing guidance to outline the options available to register a birth and death once remote birth registration becomes available and remote death registration is introduced permanently. Again, this is straightforward and can be done by existing staff within existing resources. Therefore, there are nil costs arising in relation to public-facing guidance. An awareness campaign (eg paid for advertising) which would have costs does not seem necessary, especially as informants are being asked for the same information – it is just how the information is collected which may change.

90. **Training for registrars.** The introduction of remote birth registration and introducing remote death registration permanently means that some brief training for registrars (which is likely to take place remotely using videoconferencing technology available in NRS and all local authority registration offices) may be required. However, this could be incorporated into existing planned training sessions and so minimal costs arise in relation to training ((beyond additional staggered local authority staff time to accommodate the training sessions)).

Recurring

91. There are no recurring costs for NRS.

Costs and savings to Local Authorities

One-off

92. No costs are expected for local authorities in relation to deciding how to configure services as this will be part of the ongoing configuration of services in response to Covid and when considering how to deliver services post-pandemic.

93. No costs are expected in relation to local public-facing guidance as this will form part of any existing suite of planned public communications around registration services which includes posting of service hours and other key information. An awareness campaign (eg paid for advertising) which would have costs does not seem necessary, especially as informants are being asked for the same information – it is just how the information is collected which may change.

94. Training – There may be minimal costs, as noted above.

Recurring

95. There could potentially be costs to local authorities for use of telephony and IT to contact informants. However, it should be possible for the costs of these additional phone calls to be met through existing contracts with telephony providers. In addition, local authorities are able to use videoconferencing facilities where informants wish to communicate via that route, and these do not incur additional costs. Therefore, total additional telephony costs should be nil.

Costs and savings to other Bodies, Individuals and Businesses

96. There are no costs and savings to other bodies and business as they do not carry out birth and death registration. There may be costs and savings to individuals as outlined below.

Individuals

97. There may be costs to individuals to set up a remote appointment with a registrar to register a birth or death. However, some birth and death registrations will continue to be in person. In addition, many individuals may use email to book an appointment or may be on different types of phone contracts to “pay as you go”.

98. Furthermore, informants may be spared the costs of a journey to a registration office. In practice, such costs may vary from nil (if an informant walks or cycles to the registration office or uses a season ticket) to more if a long journey is involved.

99. It seems likely that any additional costs through increased use of telephony or IT by informants will be balanced out by savings to informants in relation to journeys. Therefore, there should, overall, be net nil costs or savings to informants.

Civic government licensing: how notices may be published

100. As described above, licensing authorities/local authorities administer the licensing of various activities under the Civic Government (Scotland) Act 1982. These provisions will continue to provide licensing authorities (in relation to Part II licences) and applicants (in relation to Part III licences) with a degree of flexibility in terms of how they choose to give public notice of a licence application – either through the publication of a notice in a newspaper, or newspapers, circulating in the licensing area or instead by the publication of such a notice on the licensing authority/local authority website.

Costs on the Scottish Administration

101. Making these provisions permanent will result in no direct costs or savings to the Scottish Administration.

Costs on Local Authorities

102. Making these provisions permanent is unlikely to result in anything other than very minimal costs (i.e. staff time in placing the public notice on the relevant website) on licensing authorities/local authorities which will be met from within existing resources. Licensing authorities/local authorities already have systems in place for the publication of public notices on their websites for a range of issues (not only licensing related). It is difficult to quantify what the savings might be given the various unknown factors involved such as the number of public notices there might be across the licensing authorities/local authorities and the variation in the cost of placing advertisements in local newspapers (which can run into several hundreds of pounds).

Costs on Other Bodies, Individuals and Businesses

103. Making these provisions permanent could result in savings for Part III licensing applicants if they chose to give public notice of their application through a local authority website as opposed to placing an advertisement in a local newspaper. The savings accruing to each will depend on the cost of placing an advertisement and as discussed above this could be in the region of several hundred pounds.

Land registration

104. These provisions enable registration in three of the registers under the management and control of the Keeper, including the Land Register, to proceed on the basis of copies of documents submitted electronically thus allowing for a safer, faster and more reliable way

to transmit applications. As set out in the Policy Memorandum, Registers of Scotland carried out separate public consultation about digital submission of applications and supporting deeds⁶.

Costs on the Scottish Administration

105. In terms of one-off costs, placing these provisions on a permanent footing would allow the Keeper of the Registers of Scotland to continue to operate the online portal introduced at the outset of the pandemic with no new investment required.

106. In terms of recurring costs placing these provisions on a permanent footing would introduce no new operational costs.

107. The move to digital submissions has resulted in a reduction in annual postal costs of around £300,000.

108. Accordingly, placing these provisions on a permanent footing will result in no direct costs whilst introducing savings of around £300,000 annually to the Scottish Administration.

Costs on Local Authorities

109. Placing these provisions on a permanent footing will result in no direct costs or savings to local authorities.

Costs on other Bodies, Individuals and Businesses

110. Placing these provisions on a permanent footing will have a broadly neutral cost impact on other bodies, individuals and businesses. Permanence will see customers continue to submit applications electronically with the attendant costs of scanning the applications for submission however this negligible cost is more than offset by the savings arising from not using a mail service and significantly reduced paper use.

Freedom of Information ; giving notice electronically

111. This provision enables the Scottish Information Commissioner and Scottish public authorities which are subject to the Freedom of Information (Scotland) Act 2002 (FOISA) to issue formal notices electronically. Prior to the first Scottish Act, FOISA provided that these notices required to be delivered or posted to the recipient (section 74(1)(a) of FOISA). This provision gives authorities the flexibility to tailor their communications to requesters' preferences more closely by providing electronic notices to requesters who choose to communicate electronically while retaining the option to issue notices by post where a requester chooses to communicate by post or where electronic communications are unsuccessful.

⁶ [Digital submissions 2020 - Registers of Scotland \(ros.gov.uk\)](https://ros.gov.uk/digital-submissions-2020)

Costs on the Scottish Administration

112. This provision will result in no direct costs or savings to the Scottish Administration.

Costs on Local Authorities

113. This provision will result in no direct costs or savings to local authorities.

Costs on Other Bodies, Individuals and Businesses

114. The Scottish Information Commissioner has indicated that he issued around 290 notices electronically in the year following coming into force of the first Scottish Act. As a result, the Commissioner will have made a small saving in relation to postage and stationery costs in each case. The Scottish Government accordingly considers that the Commissioner (and any other Scottish public authority which uses this provision) will make further small savings in relation to postage and stationery costs.

Care services: giving of notices by SCSWIS

115. This provision is to ensure that Social Care and Social Work Improvement Scotland (the Care Inspectorate) can permanently issue formal notices to care service providers by electronic means, in addition to physical means. The Care Inspectorate started issuing electronic notices during the pandemic by virtue of section 101 of the Public Services Reform (Scotland) Act 2010 (added by the second Scottish Act) on a temporary basis. Further aims of this provision are to improve certainty of delivery and ensure that physical delivery of formal notices by the Care Inspectorate to corporate bodies can continue to be delivered on a wider range of persons acting on such body's behalf. Formal notices include those relating to registration, variation of conditions of registration and enforcement action.

Costs on the Scottish Administration

116. Making these provisions permanent will result in no direct costs or savings to the Scottish Administration.

Costs on Local Authorities

117. Making these provisions permanent will result in no direct costs or savings to local authorities

Costs on other Bodies, Individuals and Businesses

118. The Care Inspectorate estimate a saving of approximately £750 per annum in their postage costs. Making these provisions permanent will result in no direct costs or savings to other bodies, individuals or businesses.

Miscellaneous

Bankruptcy: meaning of “qualified creditor” and “qualified creditors”

119. The provisions include measures to increase the minimum debt level a creditor must be owed to petition the court for bankruptcy of a debtor from £3,000 to £5,000.

Costs on the Scottish Administration

120. These provisions will result in no additional direct cost to the Scottish Administration.

Costs on Local Authorities

121. These provisions will result in no additional direct costs or savings to local authorities. Although they will be unable to seek to make their debtors bankrupt for debts of less than £5,000, this provision does not extinguish the debt or prevent other means of recovery. Other debt recovery options, including diligence measures, remain available to all creditors.

Costs on other Bodies, Individuals and Businesses

122. Although these provisions will result in no additional direct costs or savings to other bodies, individuals and businesses, they will be unable to seek to make their debtors bankrupt for debts of less than £5,000. This provision does not extinguish the debt or prevent other means of recovery, including diligence measures, which remain available to all creditors.

Legal aid and advice: Claim for interim payment of fees and outlays

123. The proposal is to make permanent existing temporary provisions which allow for increasing the availability of interim payments to solicitors, with corresponding powers of recovery in the event of overpayments resulting from interim payments, and removal of conditions for counsel to be able to apply for interim payment.

124. Through these provisions and working with the Scottish Legal Aid Board (“SLAB”), a flexible and accessible scheme of interim payments has been introduced to support cash flow to legal aid providers. The scheme has been accessed by many legal aid providers through the pandemic.

125. The Scottish Government considers that it is appropriate to continue to support legal aid providers as this sector of the profession recovers from the impacts of the pandemic, and permanently putting in place the ability to make payments in this way will ensure continued support of cash flow to solicitors and counsel who provide legal aid services.

Costs on the Scottish Administration

126. The total Legal Aid budget for administration and the Legal Aid Fund is £138 million, and expenditure is spread across a financial year. The provisions in the Bill will allow for earlier access to payment rather than payments at the end of a case. This will change the profile of expenditure across the year, but will not increase the gross expenditure. On this basis, the extension of these provisions is expected to result in no direct costs or savings to the Scottish Administration.

Costs on Local Authorities

127. Making these provisions permanent will result in no direct costs or savings to local authorities.

Costs on other Bodies, Individuals and Businesses

128. Making these provisions permanent will result in no direct costs or savings to other bodies, individuals and businesses.

Mental health: removal of need for witnessing of signature of nominated person

129. A named person is someone who can look after a patient's interests if they are cared for or treated under mental health legislation. The Mental Health (Care and Treatment) (Scotland) Act 2003 sets out the procedure to be followed by a patient wishing to nominate another person to act as their 'named person'.

130. The provision will permanently remove the need for a nominated person to have their signature witnessed by a "prescribed person" (an independent advocate; medical practitioner; arts therapist, dietician, occupational therapist, physiotherapist, practitioner psychologist and speech and language therapist; person employed in the provision of, or managing the provision of, a care service; registered nurse; social worker; and solicitor) when they agree to become a named person.

131. By making this provision permanent it will continue to ensure that the patient still has the ability to choose their own representation, should they wish to do so, while providing for a named person to act for the patient. This approach continues to respect the patient's rights and allows services to be delivered effectively.

Costs on the Scottish Administration

132. The Scottish Administration has no role in practice in the nomination process therefore in making this provision permanent there will be no direct costs or savings to the Scottish Administration.

Costs on Local Authorities

133. Making this provision permanent will result in no direct costs or savings to local authorities.

Costs on other Bodies, Individuals and Businesses

134. Making this provision permanent will result in no direct costs or savings to other bodies, individuals and businesses.

Parole Board for Scotland: Chairperson's functions

135. These provisions require the Parole Board Chairperson to prepare, as a minimum, a Scheme setting out the person or persons by whom the Chairperson's functions may be exercised if the Chairperson is unavailable for reasons of incapacity, illness, or other absence from the post for an extended period, or if the post is vacant. The Chairperson would also be able to make other delegation arrangements for the Chairperson's statutory functions as they considered appropriate. The provisions put beyond doubt that the arrangements made by the Chairperson would continue to apply even in the event that the Chairperson is incapacitated or unable to act. It is not expected there will be any costs or savings incurred by the provision of a scheme of delegation. In the event of delegation being required it is not possible to assess whether any costs or savings would be associated with delegation to other members.

Costs on the Scottish Administration

136. Making these provisions permanent should not increase costs on the Scottish Administration.

Costs on Local Authorities

137. Making these provisions permanent will result in no direct costs or savings to local authorities.

Costs on other Bodies, Individuals and Businesses

138. These provisions only apply to the delegation of the functions of the Parole Board's Chairperson to other members of the Parole Board therefore, making these provisions permanent will result in no direct costs or savings to other bodies, individuals and businesses.

TENANCIES

Removal of mandatory eviction grounds

Pre-action protocol in respect of evictions relating to rent arrears

139. The provisions amend the eviction grounds a private landlord can use to regain possession so as to give the Housing and Property Chamber of the First-tier Tribunal for

Scotland (“the Tribunal”) a discretion to grant eviction in every case – previously some grounds of eviction were mandatory. The provisions also introduce a pre-action protocol for landlords seeking eviction on grounds of rent arrears. Provisions achieving the same results are currently enacted on a temporary basis in the two Scottish Coronavirus Acts but are to be made permanent in the Bill.

Costs on the Scottish Administration

140. There are quantifiable costs attached to discretionary decision-making because a housing member of the Tribunal is required to attend case management discussions (CMDs) to ensure that all relevant perspectives are considered before making a discretionary decision. Previously, housing members would have attended hearings but not CMDs.

141. The additional cost of a housing member per CMD is currently £128. At the current rate of eviction CMDs, a permanent change to the legislation would increase the cost of eviction CMDs by £120,000 annually. This could increase to around £150,000 if activity was to return to the 2019/20 level. There are also other operational costs that are more difficult to quantify, such as training requirements for members, more time for the in-house convener to ensure that the case file includes all of the evidence needed to make a discretionary decision, more applications progressing to CMDs rather than being rejected at sift, and more cases needing more than one CMD to resolve issues. This means that cases are taking longer in the system, which has an impact on casework, scheduling and clerking.

142. During 2020-21, the Tribunal received 2,467 applications across ten jurisdictions, and 2,743 applications were closed during the year. The vast majority (79%) of applications received fell within the new private rented sector jurisdiction. 31% of all applications received were for eviction and 34% of all applications received were for civil proceedings cases. This was a significant reduction from the number of cases received pre-Covid with 4,141 applications in 2019-20, 87% of which were within the private rented sector jurisdiction. Almost half (42%) of all applications received were for eviction. Case numbers are projected to rise again in 2021-22 but not to reach pre-pandemic levels.

143. Funding to the SCTS in respect of private rented sector cases was £3.942 million in 2019-20 and £3.443 million in 2020-21. In 2021-22 the transfer is £3.596 million, including estimated increased costs as a result of discretionary decision-making.

144. The Scottish Government’s view is that the Bill provisions introducing a pre-action protocol will not materially affect the cost of the eviction process.

145. The introduction of a pre-action protocol, and the Tribunal being obliged to consider a landlord’s compliance with it when deciding whether to grant eviction, will reinforce that it is in the landlord’s best interests to engage with their tenant early to prevent arrears building up. Early engagement could prevent the need for eviction altogether, which would save on Tribunal costs (as well as landlord and tenant costs) as the tenancy is sustained.

146. By amending all grounds for eviction to give the Tribunal discretion, all relevant factors will be taken into account when considering a case and the pre-action protocol will

provide relevant evidence in rent arrears cases. However, it is not considered that it will add to the Tribunal's costs beyond the additional costs already arising by reason of the move to discretionary decision-making in all cases.

147. In terms of amending all grounds for eviction to give the Tribunal discretion, the Scottish Government's view is that this provision will not materially affect the cost of the eviction process, except for cost implications for the Tribunal in relation to the impact of all cases being considered on a discretionary basis.

Costs on Local Authorities

148. It is not anticipated that these measures will impose additional costs on local authorities. These measures may indirectly help local authorities save costs relating to the provision of temporary accommodation by helping to reduce the number of private tenants who are at risk of homelessness.

149. The average cost to local authorities of a temporary furnished flat in Scotland ranges from £318.94 per week to £494.38. The cost of emergency provision can be up to £1,370 per week⁷. There were 13,097 households in temporary accommodation as at 31 March 2021. The First Scottish Act temporarily extended eviction notice periods which reduced the number of evictions. This was likely to have reduced the number of households presenting as homeless from social rented housing and from private rented housing. Preventing tenants in the private rented sector from requiring local authorities to provide homelessness temporary accommodation therefore protects them from increased housing costs for this group.⁸

150. The provisions will result in no direct costs or savings to local authorities.

Costs on other Bodies, Individuals and Businesses

151. It is not anticipated that the landlord complying with the pre-action protocol will result in any additional costs for private tenants. There may be some cost saving for tenants where the pre-action measures are successful in helping to sustain the tenancy (for example, in relation to avoiding moving costs). The exact savings will depend on the individual circumstances of the tenant.

152. In relation to private sector landlords, any additional costs for landlords resulting from the inclusion of this measure will depend on current practice. However, as outlined in the Business and Regulatory Impact Assessment⁹ for the equivalent of the pre-action protocol under the emergency legislation, it is not considered that the introduction of this pre-action step will mean that landlords need to undertake significant actions that generate

⁷ Cost of temporary accommodation taken from Temporary Accommodation in Scotland: Final report November 2018 https://pureapps2.hw.ac.uk/ws/portalfiles/portal/23430074/SB_TempAccom_mReport_FinalReport.pdf

⁸ [Homelessness in Scotland: 2020 to 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/Topics/consultations/2020/homelessness)

⁹ [BRIA for The Rent Arrears Pre-Action Requirements \(Coronavirus\) \(Scotland\) Regulations 2020 \(legislation.gov.uk\)](https://www.gov.uk/government/consultations/bria-for-the-rent-arrears-pre-action-requirements-coronavirus-scotland-regulations-2020)

any specific, additional costs beyond those that may occur in relation to seeking repossession of a property. There may also be costs savings for private landlords where the pre-action measures are successful in sustaining a tenancy and facilitating the repayment of arrears. The main cost caused by this provision is the potential for accumulated rent arrears as landlords go through the pre-action protocol process. However, landlords are free to engage with their tenants proactively, as it is in their interest not to wait for arrears to build up. The pre-action protocol is not compulsory – compliance must be taken into account by the Tribunal but eviction can still be granted where a landlord does not comply.

153. In relation to amending the grounds of eviction to give the Tribunal discretion, there may be some delay to proceedings as the Tribunal may need more time to consider all the relevant facts. Where a private sector landlord is seeking to repossess a property where the tenant is causing damage, there could be additional repair costs to bring the property up to standard.

154. In relation to money advice and housing support agencies, there will be further calls for their services to support both the tenant and the landlord to meet a pre-action protocol and there may be calls for more representation support from advice agencies (particularly from tenants) as the Tribunal will have discretion. In relation to the pre-action protocol, it should be noted that the Scottish Government has provided guidance¹⁰ which should make it straightforward to communicate to landlords and tenants what steps should be followed.

155. In cases where the tenant is not paying rent as it falls due, any delay in eviction proceedings could result in increased rent arrears. The vast majority of registered landlords in Scotland have only one property, and there could be significant financial impacts if the time to repossess is considerably longer. However, this should be seen in the context that the likelihood of a tenancy ending in an application for an eviction is, at around 0.5%, very low.¹¹ Furthermore, in the vast majority of cases, the Tribunal is unlikely to take significantly longer to decide a case on discretionary rather than mandatory grounds. Finally, with respect to rent arrears grounds, it is considered that the financial support available to tenants to which they will be signposted under the pre-action protocol may allow tenants to continue paying at least some of the rent and therefore help reduce landlords' and agents' costs.

156. The consultation does not allow individuals to identify as a private landlord but some individuals have noted that they may leave the private rented sector by selling their rental property, as they perceive that it would be more difficult to obtain an eviction (if there is discretion), adding to their overall risks in continuing operating within the sector. This view was shared by both landlord representative bodies, and landlords with one property (some of whom rely on this rental income). While it is difficult to be precise about how large this impact may be, especially as each landlord will take into account a range of factors when

¹⁰ [Coronavirus \(COVID-19\): pre-action requirements and seeking repossession of private rented housing on rent arrears grounds - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-pre-action-requirements-and-seeking-repossession-of-private-rented-housing-on-rent-arrears-grounds/pages/10.aspx)

¹¹ As set out in paragraph 141, and using pre-pandemic data for 2019-20, out of the 4,141 applications received by the Tribunal, 42% (around 1,740) were in respect of eviction. [Scottish Household Survey](https://www.gov.scot/publications/scottish-household-survey-2019/pages/10.aspx) data shows that there were around 340,000 households in the private rented sector in 2019, which gives the figure that applications for evictions related to only around 0.5% of tenancies. This includes evictions for any reason, i.e. not all these cases may involve rent arrears.

making a decision as to whether to remain in or exit the private rented sector, the factors set out above suggest that the likelihood of a landlord having to incur additional costs will be small, and the size of any such costs will be limited in the vast majority of cases. When set against the rental return that landlords can receive (in the year to September 2021, the average annual rent on a newly let two-bedroom property in Scotland was around £8,300¹²), we do not anticipate that the legislation will have a material impact on the size of the private rented sector.

157. In relation to letting agents, there may be cost implications for letting agents relating to additional administration costs (which will depend on the size and processes of individual agents) plus loss of income where a tenant is unable, or unwilling, to pay their rent. The management fees agents charge are usually based on a percentage of the monthly rent. However, in terms of rent arrears grounds, and by making the pre-action protocol permanent, this will ensure that landlords will make their tenants aware of the financial support available to them and should allow most tenants to continue paying rent and therefore help to cover agents' costs in the normal way.

TEMPORARY JUSTICE MEASURES

Courts and tribunals: conduct of business by electronic means etc. (Documents)

158. These provisions enable documents produced by a court or tribunal, or connected with criminal or civil proceedings, to be signed and transmitted electronically (for example by email), and in certain circumstances be sent to a party's solicitor instead of to the party themselves in a case, removing the requirement for physical movement and contact.

159. This enables documents to be sent, served and lodged by means of email or other electronic means. The provisions also allow that, where there is provision requiring or permitting a document to be displayed on the walls (or any other part) of a court building or to be made publicly available within a court, it can also be done by publication of the document on the SCTS website in line with any direction issued by the Lord President or Lord Justice General.

160. The use of these measures has enabled swift process changes and delivered benefits that have allowed court and tribunal services to operate more efficiently.

Costs on the Scottish Administration

161. Electronic processes have increased across all areas of criminal and civil business. The Lord President has stated the use of written submissions, the digital transmission of documents and the use of electronic signatures have enabled swift process changes which are necessary to operate court services efficiently. Civil business continues to operate virtually and remotely, as has been the case throughout the pandemic - almost all civil court and tribunal business is now conducted online or by telephone with all documents in civil

¹² Scottish Government, [Private sector rent statistics: 2010 - 2021](#)

cases lodged electronically; all new summonses signed electronically and evidential hearings for civil cases being held remotely.

162. In order to facilitate the displaying of documents on the SCTS website, SCTS have increased functionality within their IT system. This enables notices to be published directly from the SCTS Integrated Case Management System (ICMS) and has negated per annum staff costs which were directly attributable to the manual process of uploading documents onto the SCTS website resulting in estimated efficiency savings of £18,000 per annum.

163. It is difficult to identify the specific IT development cost for this feature (which is solely attributable to the publication of documents on the SCTS website) as the functionality is also being used for other court business conducted under the simple procedure process. However, any IT development costs are offset against the advantages realised from maintaining court business and by reduced staff costs and efficiency savings. As the system for website publication of documents is now automated there are no associated operational costs.

Cost on the Local Authorities

164. These provisions are not expected to place any notable costs on local authorities. Where expert witnesses, such as social workers or medical examiners, are called upon for remote attendance there will be a need to receive electronic communications. The costs of meeting these provisions are expected to be broadly cost neutral; professional staff are likely to have routine access to corporate IT from home, or in the workplace where deemed essential.

Cost on other Bodies, Individuals and Businesses

165. The extension of these provisions will result in no direct costs to other bodies, individuals and businesses. The Law Society of Scotland commented in their consultation response that there was no doubt that ‘digital interaction between court users and the courts for procedural and administrative business has brought tangible benefits in terms of cost, time and efficiency savings.

166. With regards to intimation of documents, within commissary court procedure, there may be some cost savings to individuals as it is more likely that a person seeking to contest an executor-dative petition will see an online notice and will therefore have the opportunity to make representations to the court at an earlier stage. Other financial benefits may also occur as a result of these provisions, for example less costs incurred by parties for service of documents should the sheriff decide that website publication is a more appropriate form of service when whereabouts are unknown, as opposed to publication in a newspaper. In other civil procedure, many cases will involve businesses or individuals either as pursuer or defender, and having notices published online may improve, for example, the chances of enforcing a decree or the chances of locating a defender whose whereabouts are not known, in turn enabling them to properly defend a claim against them.

Costs on Police Scotland

167. These provisions have been utilised by Police Scotland through the ability to remotely crave warrants. The reduction in travel time, whilst realising small savings, also supports a reduction in vehicle use and an associated positive reduction in the environmental impact. The speed at which warrants can now be craved also supports a reduction in overall investigation time on specific investigations albeit the financial saving cannot be quantified.

Courts and tribunals: conduct of business by electronic means etc. (Attending a court or tribunal)

168. These provisions also provide that any participant in either criminal or civil proceedings (judge, clerk, legal representatives, parties to proceedings, accused, convicted persons, appellants and witnesses) can take part in any proceedings by way of live visual (television) or audio (telephone) link from any location. This extends to the ability to conduct fully audio or video-enabled procedural hearings, where no one is physically in the same place, or in a court or tribunal building. The provisions create a default position in which requirements for physical attendance at any court or tribunal hearings are suspended, except for diets where a person is to give evidence, where the default is that a person will physically attend court. These presumptions can be overridden by the court or tribunal.

Costs on the Scottish Administration

169. Remote hearings and virtual attendance continue to remain a key part of the justice recovery programme, and have been evidenced by the introduction of additional Court capacity from September 2021 and the commensurate retention and expansion of Remote Jury Centres.

170. Justice agencies have been clear that the retention of these provisions for a longer period remains essential to address the backlog developed as a consequence of the pandemic. They equally enable further consideration of a number of key initiatives under development, including the national management of domestic abuse trials.

171. Capital and revenue outlay for necessary additional hardware (laptops, cameras and other remote devices) and for the recruitment of additional staff to prepare cases and attend court business for additional jury trials, was incurred in the initial implementation of these new processes. Further expenditure will be required to maintain and support further implementation as the use of digital processes increases.

Cost on Local Authorities

172. These provisions are not expected to place any notable costs on local authorities. Where attendance by electronic means is extended to the workforce in their capacity as expert witnesses, it is expected that the costs will be minimal. Licences for remote participation are likely to be serviced by the SCTS, with attendees being able to join using their own existing IT and internet connections. There may be some additional outlay for headsets and other equipment, such as monitors, that are necessary to take part in remote court proceedings if these are directed by the court.

Cost on other Bodies, Individuals and Businesses

173. It is recognised that some parts of the legal defence community may still incur some costs to enable participation in remote court proceedings, although it is expected that over the last 18 months many will have secured access to IT used for video calling to clients that are on remand or serving sentences. Some consultation responses considered that existing resources could be better used if virtual attendance was the default position.

Police Scotland

174. Capital and revenue outlay for necessary additional hardware (laptops, cameras and other remote devices) was incurred during the initial implementation of these new processes and further expenditure will be required to maintain and support further implementation. The costs that have been incurred were: installation of virtual court hardware system £185,074; evidence giving rooms £21,200; mobile devices £11,000; Wifi equipment £142,000; and Hardware £352,274.

175. Police Scotland will continue to incur software licencing costs, associated ongoing system maintenance and operational resource to support the video links. It costs £1,125 per device for a 3 year Hardware Support. Therefor there will be a requirement to pay £46,125 (41 devices x £1,125) for renewed support in 2024, unless numbers increase. Licences are covered by the Police Scotland Enterprise Licence and are difficult to quantify individually. In addition, there is a resourcing cost of 0.4 FTE of Operational Resource for the RRT Hardware (both Virtual Courts and Remote Provision of Evidence), which at Grade 5, £31,133, equates to an incurred cost of **£12,453.20**. These costs are fluid depending on demand, but representative of the recent period of expansion. If numbers increase, these costs will rise.

176. Further capital costs will be incurred by Police Scotland in relation to any expansion of the infrastructure to support enhanced police to court video linking for first appearances from custody and remote evidence giving. Currently these facilities are present within 23 custody suites with seven used to address daily custody appearances. There have been requests from SCTS, and multiple Sheriff Principals, to expand the number of locations where Virtual Court Systems are used. These plans are currently in the process of being developed, and no firm final number and locations is ready at the time of writing. These unit cost £4,514 including 3 years of Hardware Support.

177. There have also been 52 evidence giving rooms established across the country. Which may increase further depending on the demand from COPFS relating to witness numbers. This will be monitored closely over the next 6 months to allow immediate reaction as necessary.

178. Additional capital costs will fall to Police Scotland related to enabling confidential solicitor to client video linking for interviews which take place both before and after the first appearance in court. At present there are 44 mobile devices in use, costing £11,000, across the estate with plans in place to purchase further devices. £142,000 is associated with installing and improving existing Wi-Fi networks within Custody Suites having already

been allocated through existing funding streams. This work is ongoing and due for completion prior to the end of the current Financial Year.

179. There are financial savings and operational benefits realised on each occasion remote evidence is given including travel, accommodation and officer's time spent travelling or away from their station, depriving the community of their services. Monitoring of the cost savings is being collected and in the early stages to provide an average cost per Officer saved. However, based on the Recent case Vs McCallum in Paisley High Court the following cost savings were made for 2 x Officers appearing virtually from Campbeltown: Saving due to Officers Appearing Virtually = Theoretical cost of attending – actual cost for virtual appearance £1,833.96 - £535.70 = **£1,298.26**. *Additional cost benefits from not cancelling Rest Days and Backfill are not included as cannot be confirmed these would have been required.

180. It is not possible at this stage to provide a specific estimate of the overall impact of savings and costs falling on Police Scotland at this time, but details may be available at a later date and will be commensurate with pace and scale at which remote witness evidence is rolled out.

Fiscal fines

181. The provisions retain for a further period the increase in the maximum level of fiscal fine from £300 to £500 that was originally made through the first Scottish Act and extended in the Coronavirus (Extension and Expiry) (Scotland) Act 2021 (“the Extension and Expiry Act”), enabling a wider range of cases to continue to be dealt with by Fiscal Fine and, thereby, mitigate the impact of Covid on the justice system.

182. New temporary adjustments to the fiscal fine scale (that provides for the different amounts of fiscal fines that can be offered up to and including the £500 level) are also provided for.

Costs on the Scottish Administration

183. In accordance with the revised policy guidance issued by the then Lord Advocate in relation to fiscal fines following the original increase in April 2020, the increase to the maximum level of fiscal fine from £300 to £500 and adjustments to the fiscal fine scale to give effect to this measure enables alternative action to be taken in a wider range of summary cases, where such action is assessed as appropriate by prosecutors.

184. Prosecutors have been directed to first consider offering a direct measure (i.e. initial action by a prosecutor following report from the police), in particular a fiscal fine, in relation to appropriate cases which would otherwise have proceeded in the Justice of the Peace court.

185. Between 7 April 2020 and 31 October 2021, 21,297 people, or approximately 25% of individuals who received a first marking action for a direct measure, were offered a fiscal fine. Of those 21,297 people, 595 (3% of individuals offered a fiscal fine) have been issued a fine amount above the previous scale maximum of £300, up to £500. Prior to the

introduction of a fiscal fine in the range £301 to £500, cases where such a fine has been offered would instead have been considered for prosecution in court. The change in the maximum level however has not changed the way in which fiscal fines in the range up to £300 have been offered. As such, it can be said that approximately 595 cases have been able to be dealt with via a fiscal fine when previously prosecution in court would have been the likely outcome.

186. Although it can be seen that the increase in the maximum level of a fiscal fine has allowed for alternative action to prosecution to be taken in a wider range of cases, the reduced costs arising from fewer court proceedings in practice and the associated savings to the COPFS and the SCTS which would ordinarily be effected as a result of diverting a greater number of cases from prosecution are largely notional savings. This is because the number of court cases were limited by the significantly reduced operational capacity to deal with summary court proceedings as a result of the Covid pandemic and which has resulted in a significant backlog of cases. With the recovery programme in place the SCTS estimate it will take until 2024 to clear the backlog of summary proceedings. Purely for illustrative purposes, the average cost of a prosecution taken forward in the Justice of the Peace Court is £1,008¹³. This covers the costs arising for COPFS, SCTS and Scottish Legal Aid Board. By not having to prosecute some 595 cases that otherwise may have been prosecuted, this amounts to an illustrative saving of £599,760. As noted above, this is not an actual savings but does give a sense of how the increased use of fiscal fines has helped reduce the number of cases being prosecuted.

Costs on Local Authorities

187. Extending these provisions will result in no direct costs or savings to local authorities.

Costs on other Bodies, Individuals and Businesses

188. The increase in the maximum fiscal fine that COPFS can offer as an alternative to prosecution will have a financial impact on those who choose to pay the fine rather than being prosecuted in the courts. However, such an impact may be minimal. This is because COPFS analysis of Justice of the Peace court disposal data is that approximately 4% of relevant cases were formerly disposed of with a fine amount between £300 and £500. Therefore by offering a fiscal fine in relation to appropriate cases (which would otherwise have proceeded in the Justice of the Peace court in accordance with the Lord Advocate's revised policy guidance for fiscal fines for use of this measure), the financial impact on those offered a fiscal fine above the old maximum of £300 up to the new maximum of £500 (3% between 7 April 2020 and 31 October 2021) is likely to generally be the same than being prosecuted in the courts, having regard to JP court sentencing practice.¹⁴ Other than that, the Scottish Government does not consider that extending this measure will have any impact on other bodies, individuals or businesses.

¹³ [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)

¹⁴ [Fiscal Fines | Scottish Parliament Website](https://www.gov.scot/fiscal-fines)

Failure to appear before court following police liberation

189. During the Covid pandemic, people have been unable to attend court in accordance with their undertaking due to public health guidance or infection. These provisions seek to retain for a further period the measure originally made in the second Scottish Act and retained in the Extension and Expiry Act which provides the court with a power to prevent the expiry of an undertaking and any protective conditions attached to it when certain conditions are met. In particular, the provisions provide where a person fails to appear at court as required by the terms of the undertaking and the court considers that the person's failure to appear is attributable to a reason relating to Covid, and the court does not consider it appropriate to grant a warrant for the person's arrest on account of the failure to appear, the court may modify the terms of the undertaking given by changing the time at which the person is to appear at the court.

Costs on the Scottish Administration

190. The extension of these provisions will result in no direct costs or savings to the Scottish Administration.

Costs on Local Authorities

191. The extension of these provisions will result in no direct costs or savings to local authorities.

Costs on other Bodies, Individuals and Businesses

192. The extension of these provisions will result in no direct costs or savings to other bodies, individuals and businesses.

National jurisdiction for callings from custody etc.

193. These provisions, originally made in the first Scottish Act and retained in the Extension and Expiry Act, introduced Scotland wide jurisdiction for sheriffs dealing with first appearances from police custody. This enables custody proceedings to be heard in any sheriff court in Scotland by a sheriff of any sheriffdom, no matter where the alleged offence took place. The provision also enables the court to hear any continuation of a case up until a not guilty plea is tendered and not accepted by the prosecutor (or full committal in petition proceedings).

Costs on the Scottish Administration

Scottish Courts and Tribunals Service

194. There are no anticipated quantifiable costs or savings for the SCTS as a result of extending sheriffs' jurisdiction throughout Scotland for the purpose of dealing with an individual appearing from police custody. The provision simply redistributes the cases to which it applies across the country and allows for a more efficient approach to be taken in where cases are dealt with without strict jurisdictional boundaries limiting the efficient distribution of cases.

Costs on Local Authorities

195. Extending these provisions will result in no direct costs or savings to local authorities.

Costs on other Bodies, Individuals and Businesses

196. Extending these provisions will result in no direct costs or savings to other bodies, individuals or businesses.

Police Scotland

197. The move to a new national jurisdiction for dealing with appearances from custody has supported Police Scotland in operating a smaller number of centralised police custody suites across Scotland in response to Covid.

198. Where utilised, it has enabled Police Scotland to restrict unnecessary movement of people in the justice system via custody procedures and reduce the requirement to move prisoners around the country to attend court proceedings. Moving forward, this approach remains appropriate and relevant.

199. The measure supplements the approach taken in virtual court appearances more generally. It may reduce the overall time an individual spends in police custody and the associated police resources by enabling all matters to be heard in one court in turn preventing the subject having to be transported across the country to appear at different courts on different days.

200. It is not possible to provide a specific estimate of the overall impact of costs and savings falling on Police Scotland. The exact costs/saving impact depends on a number of uncertainties relating to the number of accused persons; the number of live custody matters an accused person has and where an accused person is held compared to where the originating court is. However, the overall cost impact is expected to be relatively cost neutral.

201. The extension of these provisions will result in no other direct costs or savings to other bodies, individuals or businesses.

Criminal procedure time limits

202. These provisions extend certain time limits contained in the Criminal Procedure (Scotland) Act 1995 and have the effect of increasing the maximum time period that an accused person can be held on remand prior to trial without the court granting an extension, together with other time limits for progressing a criminal case including the maximum time before an indictment requires to be served on an accused person who is in custody and the maximum wait prior to trial where the accused is not in custody (again, without the court granting an extension). In general terms, they continue the effect of provisions currently contained in the first two Scottish Acts and retained in the Extension and Expiry Act.

Costs on the Scottish Administration

Crown Office and Procurator Fiscal Service

203. There are no specific costs arising for COPFS. Generally, the majority of costs arising to COPFS relates to staff time incurred in the preparation of cases for indictment and trial. These cases will continue to be prepared. The provisions have provided for time savings to COPFS during the period they have been in effect as a result of staff time that would otherwise have to have been spent making applications to the court to extend time limits in individual cases and attendance at court for hearings on those applications instead being able to be directed towards preparation of cases for court.

204. As set out in the Policy Memorandum, these are significant as the Covid pandemic has resulted in a large backlog of cases within the justice system, with the impact being particularly serious with regards sheriff and jury and High Court of Justiciary (“High Court”) cases. If the time limit extension provisions are not in place, there would require to be a large number of individual applications to extend these time limits on a case-by-case basis to avoid these cases being lost.

205. By way of illustration, information from COPFS indicates that, as of November 2021, there are currently 786 potential sheriff and jury cases and 530 potential High Court cases which are older than the pre-pandemic time limits, with many more that are close to those limits. As an illustration of the possible resource costs if these provisions are not retained beyond September 2022, it is likely that expiring them would result in an immediate requirement for the court to consider well over 1,000 applications to extend time limits. It is likely that there would require to be repeat applications to extend time limits for individual cases due to the size of the system backlog. Whilst system resources were diverted to deal with first phases of cases already past pre-pandemic time limits, the next phase of cases under preparation would similarly approach or pass the pre-pandemic time limits, resulting in waves of applications to extend time limits. The diversion of resources to repeatedly extend time limits on a case-by-case basis would significantly reduce capacity to address the backlog of cases in the system.

206. The retention of these provisions will enable COPFS to ensure that staff time would otherwise have to be devoted to time limit extension applications to continue to be used to prepare cases for court and resolve cases at court. Though difficult to quantify, as well as the direct savings from not having to dedicate resources to large numbers of hearings to extend time limits in individual cases, it is likely that retention of the time limits extension provisions beyond September 2022 will result in resource savings by reducing the size of the backlog of cases relative to what would be the case if the time limits provisions are expired. In general terms, COPFS note that older cases are more resource-intensive to manage for all parts of the justice system, for example, in properly keeping victims and witnesses engaged and supported throughout a significantly delayed justice process.

Scottish Courts and Tribunals Service

207. The retention of these provisions will continue to ensure that resources that would otherwise have been used to determine applications by COPFS to extend time limits in individual cases are used to progress trials and so address the backlog of court cases that has

built up during the pandemic. As noted above, the number of applications that COPFS would expect to have to make, and that the courts would then have to determine, if the time limits extension provisions are not retained is such that the time that would otherwise be diverted away from progressing trials would be quite significant.

208. As noted above, there are also likely to be indirect savings to SCTS. These may arise from the relative reduction in the size of the backlog of cases if the time limits extension provisions are retained. This would arise from the fact that older cases can often be more resource-intensive to progress through the courts as they tend to be more complex with more time having elapsed since the alleged commission of the offence, particularly where there are many witnesses or where witnesses are hesitant about engaging in the justice process.

Scottish Prison Service

209. The reduced capacity of the courts to process criminal cases as a result of the Covid pandemic has had a significant impact on SPS arising from its impact on the prison population. The overall prison population is lower now (November 2021) than immediately prior to the Covid pandemic (March 2020). However, this reduction relates entirely to the post-conviction sentenced population with the pre-conviction non-sentenced population (the remand population) increasing significantly.

210. The costs arising from the increase in the remand population have not necessarily arisen directly from the extension of statutory time limits applying in criminal cases. This is because under pre-existing law, it is possible for the parties to apply for these time limits to be extended on cause shown. As such, if there had been no provision for the extension of statutory time limits in all criminal cases, it is likely that in most of the affected cases, the time limits would have been extended on a case-by-case basis by the courts, reflecting the impact of the pandemic on the justice system while maintaining the ability for justice to be carried out in individual cases. As such, it is not possible to say with any degree of certainty what impact, if any, the extension of remand time limits, in particular, has had on the size and composition of the prison population.

211. However, the increased time that accused people are spending on remand as a result of the backlog of court cases is one of many challenges that SPS have experienced over the course of the pandemic.

212. Where an individual has been held on remand for a lengthy period who otherwise would have been handed a custodial sentence, this may cause SPS operational difficulties. The needs of remand prisoners can be quite different to those of sentenced prisoners. This is especially the case in the context of the pandemic due to the fact that the SPS estate needed to be reconfigured to meet the needs of a rising remand population, albeit as part of an overall reduced prison population.

213. Furthermore any individuals held on lengthy remand stays who are found not guilty or given a non-custodial sentence would represent a considerable additional cost as well as having a significant negative impact on the individual in question. This arises as part of the

normal operation of the justice system, but with increased numbers held on remand for longer periods the impact is potentially greater. It is not possible to provide a specific indication of what these costs are. This is because of the wide range of factors affecting how cases progress including the decision-making of individual courts as regards use of remand, type of cases dealt with by the courts, previous histories of those remanded at any given time etc.

214. The backlog of cases arising from the Covid pandemic has also had an impact on the size of the sentenced population. Had the courts been operating at their pre-Covid levels, a significant proportion of the remand population would have progressed through the court process receiving a conviction and thereafter a custodial sentence as a disposal. As such, the reduction in the sentenced population should be seen within this context. Immediately prior to the pandemic, on 20 March 2020, the total size of the prison population was 8,015. Of these 1,543 were being held on remand and 6,472 were sentenced prisoners. As of 19 November 2021, the total size of the prison population was 7,575 and of these, 2,221 were being held on remand, and 5,354 were sentenced prisoners¹⁵. Some of the increase in the remand population is, to a certain extent, individuals who would still be in custody as they would be serving a custodial sentence if court activity had not been affected by the pandemic.

215. For these reasons, the direct financial impact that any lengthy remand stays on SPS, and the extent to which provisions extending time limits have directly contributed to this, is impossible to assess. The total size of the prison population is lower than immediately prior to the Covid pandemic, albeit with an increasing proportion of individuals held on remand. However, the backlog of cases arising from the Covid pandemic has led to lengthy remand stays that otherwise wouldn't have occurred and notwithstanding the challenges of separately assessing what impact, if any, the extension of remand time limits will have had on the size of the remand population, it is clear that an increasing remand population has caused operational pressures for SPS.

Costs on Local Authorities

216. The extension of these provisions will result in no direct costs or savings to local authorities.

Costs on Other Bodies, Individuals and Businesses

Scottish Legal Aid Board

217. It is anticipated that there will some savings for SLAB. These are difficult to quantify but where an application to extend a time limit is made by COPFS, defence representatives would need to seek instructions from their client and, depending on those instructions,

¹⁵ <https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>

further costs may be incurred by SLAB representing the accused at any hearing on the application.

218. The extension of these provisions will result in no direct costs or savings to other bodies, individuals and businesses.

Proceeds of Crime

219. This provision continues the amendment to section 99 of the Proceeds of Crime Act 2002 (Part 3: Confiscation), in the ways explained in the Policy Memorandum.

Costs on the Scottish Administration

220. There is likely to be an increase in applications for postponement of proceedings for a confiscation order due to circumstances arising as a result of Covid, rather than the existence of this provision. The provision simply puts beyond doubt that reasons related to Covid may be regarded as “exceptional circumstances” under section 99(4) of the 2002 Act and it is unlikely in itself to lead to anything more than limited costs for the Scottish Administration.

Costs on Local Authorities

221. The extension of this provision has no impact on Local Authorities and consequently will result in no direct costs or savings to local authorities.

Costs on other Bodies, Individuals and Businesses

222. The extension of this provision on other Bodies, Individuals and Businesses and consequently will result in no direct costs or savings other bodies, individuals and businesses.

Prisons and young offenders institutions

223. This provision allows that the Scottish Ministers may, by regulations, provide that a person who falls within a description of persons specified in the legislation is to be released from prison early.

224. During May-June 2020, the Scottish Government instructed the early release of a limited number of prisoners under the powers established in the 2020 Act. The regulations defining the scope of the release process were developed by the Scottish Government to deliver a reduction in the prison population that was proportionate to the challenges faced by the Scottish Prison Service at that time, whilst protecting public safety, and being deliverable in a timely fashion utilising the resources available.

225. The Scottish Government has not instructed a further use of the early release power, but has consistently indicated that the option would remain under consideration, in dialogue

with the Scottish Prison Service (SPS) and other stakeholders – and that it could still be deployed if conditions justified it in the future.

226. The scope and parameters of any future release process would have to be devised in response to the circumstances at that time, to provide the necessary effect on conditions within prisons. As a result, a potential future release process may replicate some of the regulations and arrangements applied in May 2020, but that would be very much dependent on the specific circumstances that were being faced in prisons at that time. The potential wider circumstances and capacity of other partners in the release process at some future date is also an unknown.

Costs on the Scottish Administration

227. Presuming that any future early release process followed broadly similar parameters to the May 2020 process, a number of cost implications can be estimated. Given that the May 2020 process excluded individuals who were serving long sentences, or were subject to post-release supervision orders, there was no requirement for Justice Social Work to undertake statutory post-release supervision for the effected individuals.

228. In May 2020 the SPS undertook the review of each eligible prisoner's case, which required a moderate expansion of the standard processes to prepare any prisoner for release. The SPS liaised with 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 liaised with health boards to alert them where an individual had specific healthcare needs upon release.

229. The assessment of 450 individuals and eventual early release of 348 prisoners was undertaken in 28 days, which resulted in an increase in release activity of around 50% over the usual prison release workload for that period. 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).

230. 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.

231. Certain costs and savings to the Scottish Administration could potentially be derived from a future early release process (depending on the scale of the release process that the SG decided was necessary), which would fall into the following main areas:

- 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.

- 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. In addition to their hourly rate, overtime work will attract additional payments of between 30% and 60% of their hourly rate (in practice this ranges from £16.64 to £74.40).
- SPS would anticipate a reduction in direct costs from a reduction in prisoner numbers. The indicative savings which SPS have modelled are approximately £7 per prisoner, per day. The figure of £7 comprises of a number of different expenses, including not having to provide food for a prisoner or pay wages to prisoners. It is recognised that these are far lower than the total costs of imprisonment, as most of these savings could not be recovered due to the fixed nature of many costs.
- There are some potential savings in relation to electronic monitoring. It is assumed that some short sentence prisoners who would have applied to receive Home Detention Curfew (with associated electronic monitoring costs) would receive emergency release without electronic monitoring. The savings from electronic monitoring would be influenced by the size of this cohort of people as well as unit costs for electronic monitoring. Current contract costs (which may be revised) are an average daily cost of approximately £8 per monitored individual, with a one-off charge of £130 for the combined activities of install/de-install.

Costs on Local Authorities

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

233. 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. 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).

- Costs for any increase in 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. Local authority-supported voluntary throughcare activity 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. There is no central account of the budget applied by which

area to deliver this service. Given the variation in service delivery, and the lack of separate budget arrangements, it is not possible to anticipate a potential cost.

- Beyond any statutory activity required of justice social work upon the release of specific prisoners, in certain cases there may be additional social work activity required on the release of an individual from prison, such as accessing family support services, or wider social services support. Overall, it is expected that emergency release would be expected to result in a cost pressure on local authorities and not a potential area for releasable cash savings, though it is not currently possible to estimate the scale of this potential impact.

Costs on other Bodies, Individuals and Businesses

234. 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.

235. 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. (As discussed above, there would also be a saving to Prison Service resources given they would not be supporting this cohort for the same period.)

Costs Associated with Third Sector support for prison leavers

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

237. 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. The delivery of this type of service was heavily impacted by Covid restrictions. Workers were unable to enter prisons, and unable to meet their service users in person in the community, and had to restructure their services to maximise phone, text and email contact, and reduce any personal contact to emergency cases only.

238. 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. For the national Public Social Partnership services discussed here, any budget or resource impact arising from the early release process was accommodated within their annual grant funding allocated by the Scottish Government.

SUMMARY OF COSTS

239. A summary of the estimated costs and savings to the Scottish Administration, Local Authorities and other bodies, individuals and businesses of the Bill.

Topic	Financial Memorandum Paragraph	Costs on Scottish Administration	Costs on Local Authorities	Costs on other bodies, individuals or businesses
Modifications of the Public Health Etc. (Scotland) Act 2008	9-24	Currently nil, but possible costs or savings if powers are used.	Currently nil, but possible costs or savings if powers are used.	Currently nil, but possible costs or savings if powers are used.
Arrangements for vaccination and immunisation	25-30	Possible saving	Nil	Nil
Educational establishments etc.	31-48	Potential costs are possible though the quantum and scale of those would be dependent on the nature and circumstances of the public health emergency that being faced at that time.	Potential costs are possible though the quantum and scale of those would be dependent on the nature and circumstances of the public health emergency that being faced at that time.	Potential costs are possible though the quantum and scale of those would be dependent on the nature and circumstances of the public health emergency that being faced at that time.
School consultations	49-52	Net Nil impact expected	Net Nil impact expected	Net Nil impact expected
Bankruptcy: remote meetings of creditors	53-56	Nil	Possible savings in administration costs. Marginal savings in terms of staff time and travel costs.	Possible increase in funds available to creditors. Marginal savings in terms of staff time and travel costs.
Civic licensing: how hearings may be held	57-61	Nil	No details of costs or saving available	May be some savings in term of travel costs
Alcohol licensing: how hearings may be held	62-67	Nil	No details of costs or saving available	May be some savings in term of travel costs
Requirements of writing: Disapplication of	68-72	Nil	Nil	Potential for minimal costs to regulatory bodies.

This document relates to the Coronavirus (Recovery and Reform) (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 25 January 2022

physical presence requirements				Potential for minimal savings to individuals and businesses.
Custody at police stations: Custody officers' functions	73-80	Expected to be cost neutral	Nil	Costs will be met within existing budgets
Bankruptcy: service of documents	81-84	Nil	Possible savings in administration and stationary costs	Possible savings in administration and stationary costs
Registration of births and deaths	85-99	Potential minimal costs for staff training	Potential minimal costs for staff training	Nil costs to other bodies and business. Costs and savings to individuals registering births should balance out.
Civic licensing: how notices may be published	100-103	Nil	Minimal savings in terms of staff time	Expected savings of advertising costs
Land registration	104-110	Nil costs. Savings of around £300,000 annually.	Nil	Negligible costs of scanning applications for submission will likely be offset by savings arising from not using a mail service and significantly reduced paper use.
Freedom of information: giving notice electronically	111-114	Nil	Nil	Small savings in relation to postage and stationery costs
Care services: giving of notices by SCSWIS	115-118	Nil	Nil	Estimated small annual saving of approximately £750 in postage costs.
Bankruptcy: meaning of "qualified creditor"	119-122	Nil	Net Nil impact expected (this provision does not extinguish	Net Nil impact expected (this provision this does not

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and “qualified creditors”			the debt owed to creditors or prevent other means of recovery)	extinguish the debt owed to creditors or prevent other means of recovery)
Legal aid and advice: Claim for interim payment of fees and outlays	123-128	Net Nil impact expected (provision allows earlier access to legal aid payments, but total paid is unchanged)	Nil	Nil
Mental health: removal of need for witnessing of signature of nominated person	129-134	Nil	Nil	Nil
Parole Board for Scotland: Chairperson’s functions	135-138	No increase in costs expected	Nil	Nil
Removal of mandatory eviction grounds and Pre-action protocol in respect of evictions relating to rent arrears	139-157	The Tribunal estimates that its additional costs would be £150,000 per annum if case activity was to return to the 2019/20 level.	These measures may help local authorities save costs relating to the provision of temporary accommodation by helping to reduce the number of private tenants who are at risk of homelessness.	Potential costs for private sector landlords seeking repossession include accumulation of rent arrears during the pre-action protocol process and the potential for additional repair costs in cases where property damage is occurring. Possible additional administration

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				<p>costs for letting agents.</p> <p>Possible increase in demand on money advice services and housing support agencies, to support tenants and landlords.</p>
<p>Courts and tribunals: conduct of business by electronic means etc. (Documents)</p>	158-167	<p>Largely cost neutral for SCTS however there may be some minimal savings in staff costs due to the automation of the document upload to website process</p>	<p>Not expected to place any notable costs on local authorities</p>	<p>Potential for minimal savings to individuals and businesses as online publication of documents may increase opportunity for parties to make representations to the court at an earlier stage which is likely to reduce overall case costs.</p>
<p>Courts and tribunals: conduct of business by electronic means etc. (Attending a court or tribunal)</p>	168-180	<p>It is anticipated that SCTS and COPFS will continue to incur some software licencing costs, associated ongoing system maintenance and operational resource to manage bookings system for video links, with the majority of costs likely to fall to SCTS</p>	<p>Anticipated to be minimal going forward.</p>	<p>Difficult to quantify for Police Scotland as their will be some efficiencies identified as well as ongoing running and capital costs. More detail will be provided as the position becomes clearer.</p>

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Fiscal fines	181-188	Net Nil impact expected	Nil	Financial impact on those who choose to pay the fine rather than being prosecuted in the courts. Otherwise Nil.
Failure to appear before court following police liberation	189-192	Nil	Nil	Nil
National jurisdiction for callings from custody etc.	193-201	No anticipated quantifiable costs or savings	Nil	Nil
Criminal procedure time limits	202-218	Net Nil impact expected, but specific costs or savings difficult to quantify	Nil	Some potential savings anticipated for Scottish Legal Aid Board. Otherwise Nil.
Proceeds of crime	219-222	Nil	Nil	Nil
Prisons and young offenders institutions	223-238	Net Nil impact expected	Dependent on impact of early release process on the delivery of statutory duties	Net Nil impact expected (costs brought forward due to early release, which would otherwise occur later)

This document relates to the Coronavirus (Recovery and Reform) (Scotland) Bill (SP Bill 9) as introduced in the Scottish Parliament on 25 January 2022

CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) BILL

FINANCIAL MEMORANDUM

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