

# **VICTIMS, WITNESSES, AND JUSTICE REFORM (SCOTLAND) BILL**

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## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Victims, Witnesses, and Justice Reform (Scotland) Bill, introduced in the Scottish Parliament on 25 April 2023.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 26-EN);
  - a Policy Memorandum (SP Bill 26-PM);
  - a Delegated Powers Memorandum (SP Bill 26-DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 26-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 Bill contains a package of reforms which, taken together, form an overall transformed approach in how victims are treated in a more responsive and sensitive justice process which puts people at its heart. The Bill strengthens the rights of victims of crime and embeds trauma-informed practice across the justice system; it also improves the experience of vulnerable parties and witnesses in civil cases. The Bill looks to address, in a practical way, longstanding concerns and difficulties in how justice operates for victims of the most serious sexual crimes.
5. The Bill is part of a wider programme of work set within the context of the Vision for Justice in Scotland, which was published in February 2022 and outlines the aims and priorities for the justice system over the next four years.<sup>1</sup> The provisions in this Bill progress the Vision's transformation priority of a person-centred and trauma-informed justice system and take forward the priority actions of hearing victims' voices and ensuring women and girls are better served by our approaches to justice.

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<sup>1</sup> [The Vision for Justice in Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot)

6. The Bill has been informed by the work of the Victims Taskforce<sup>2</sup> and recommendations from Lady Dorrian’s Review into Improving the Management of Sexual Offence Cases,<sup>3</sup> as well as by the findings from two public consultations: one which considered proposals to improve victims’ experiences of the justice system;<sup>4</sup> and one which sought views on the three verdict system in Scottish criminal trials and accompanying reforms, including jury size and majority required for conviction.<sup>5</sup>

7. The Bill has six substantive parts, which are:

- Part 1 – Victims and Witnesses Commissioner for Scotland
- Part 2 – Trauma-informed practice
- Part 3 – Special measures in civil cases
- Part 4 – Criminal juries and verdicts
- Part 5 – Sexual Offences Court
- Part 6 – Sexual offences cases: further reforms (anonymity for victims; independent legal representation for complainers; and pilot of single judge rape trials)

8. Further information about the background and the policy intention behind the Bill is set out in the Policy Memorandum which accompanies the Bill.

9. This Financial Memorandum provides information about identified costs and savings for each part of the Bill. It is highlighted that a number of costs cannot be estimated at this time as these will depend on operational decisions taken after the legislation is passed. Where costs can be estimated, these have been summarised in tables in the relevant sections of this Financial Memorandum, and tables summarising overall costs for each part of the Bill are included at the end of the document.

## **PART 1 (SECTIONS 1 – 23) – VICTIMS AND WITNESSES COMMISSIONER FOR SCOTLAND**

10. The Bill creates a Victims and Witnesses Commissioner for Scotland - a new Scottish public body, independent of the Scottish Government and accountable to the Scottish Parliament. The Commissioner will provide an additional, statutory mechanism for the voices of victims and witnesses to be heard and will help raise awareness and monitoring of their rights. The Bill contains provisions that give the Commissioner an initial remit covering the adult criminal justice system and enabling powers that provide for Ministers to expand this remit to other parts of the justice system (for example, civil and youth justice) at a later point in time should this be considered desirable.

11. The Victims and Witnesses Commissioner’s functions will include:

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<sup>2</sup> [Victims Taskforce - gov.scot \(www.gov.scot\)](http://gov.scot)

<sup>3</sup> [Improving-the-management-of-Sexual-Offence-Cases.pdf \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk/improving-the-management-of-sexual-offence-cases.pdf)

<sup>4</sup> [Improving victims’ experiences of the justice system: consultation - Scottish Government - Citizen Space](https://www.gov.scot/citizen-space/improving-victims-experiences-of-the-justice-system-consultation)

<sup>5</sup> [The not proven verdict and related reforms - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.gov.scot/citizen-space/the-not-proven-verdict-and-related-reforms)

- raising awareness of victims’ rights and interests;
- promoting best practice, in particular trauma-informed practice, by criminal justice agencies and organisations that provide services to victims;
- monitoring compliance with the Victims’ Code for Scotland and Standards of Service for Victims and Witnesses;
- undertaking and commissioning research; and
- making recommendations to the Scottish Government, criminal justice agencies and organisations that provide victim support services.

## **Costs on the Scottish Administration**

### ***Scottish Government and Scottish Parliament***

12. The main costs are set out in two sections - set-up and year 1 costs and recurring annual costs. As the Victims and Witnesses Commissioner will be accountable to the Scottish Parliament, the creation of this role will result in additional costs to the Parliament. Current practice requires that the set-up and year one costs are paid by the Scottish Government, with the recurring costs thereafter met by the Scottish Parliament.

13. There may be some additional costs for public bodies associated with the creation of a Victims and Witnesses Commissioner, dependent on the extent of the interactions and the requests made. These are expected to be minimal.

### **Set-up and year 1 costs**

14. The Commissioner’s post is expected to be full-time (1.0 FTE), with remuneration for the post totalling up to £126,119 (based on a full-time salary cost of £86,769, plus employer’s on-costs<sup>6</sup> of £39,350). Recruitment costs are estimated at £8,000. The appointment of the Commissioner will be taken forward by the Scottish Parliament in accordance with the Parliament’s Standing Orders. The initial tasks of the Commissioner will be to establish their office, including recruiting staff and identifying suitable office premises.

15. The location of the Commissioner’s office will be a matter for the Commissioner to decide during the set-up period, subject to any direction given by Scottish Parliamentary Corporate Body (SPCB). The Scottish Government Estates Division has estimated total accommodation costs for set-up and the first year to be up to £481,900. This includes fit-out costs of £250,000 - £300,000 (including VAT), based on a requirement of 1,700 square feet, which assumes a new privately leased space that requires to be fitted out to suit the Commissioner’s needs. Utilising a space that has already been fitted out (or utilising space on the existing government estate) could substantially reduce these potential costs. Additional one-off costs for set-up include professional and legal fees of up to £35,000 (including VAT) to search for suitable property, agree terms, carry out surveys

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<sup>6</sup> On-costs are payments made by employers in addition to paying a salary, including national insurance and pension contributions.

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(SP Bill 26) as introduced in the Scottish Parliament on 25 April 2023*

and complete legal agreements. Rent and rates for a year are estimated at up to £59,500 and up to £23,800, respectively.

16. For IT set-up/website, the estimated set-up costs are based on the expectation that the Commissioner may wish to use the Scottish Government IT system (“SCOTS”) as is the case with the Scottish Human Rights Commission, the Police Investigations and Review Commissioner, the Scottish Biometrics Commissioner and the Scottish Public Services Ombudsman. The outline costs have been estimated by the Scottish Government Online Communication Team on the basis of a complete installation of SCOTS into a non-SCOTS building, as well as hardware and software costs. This is estimated to cost up to £68,700. As with accommodation costs, if the Victims and Witnesses Commissioner was to be located in a building that is already supplied with SCOTS, the set-up costs could be reduced, in this case by up to £15,000.

17. Further set-up costs relating to marketing/payroll and HR set-up are estimated at £4,000.

Table 1 – Set-up / year 1 costs (one-off)

<b>Type of cost</b>	<b>Amount</b>
Recruitment	£8,000
Remuneration for the Commissioner (full-time salary cost of £86,769 plus employer’s on-costs of £39,350) (remuneration is dependent on appointment date)	Up to £126,119
Accommodation (annual rent, rates, service charge, professional fees for acquisition, building surveys, fit-out and legal fees)	Up to £431,900
IT, mobile and website set-up (set-up costs for installation of SCOTS, line connection, hardware and software for 5 people (Commissioner plus 4 staff) - £37,500 (+VAT)) (website design and installation – up to £31,200 (+VAT))	Up to £68,700
Marketing/Payroll and HR set-up	£4,000
<b>Total costs</b>	<b>Up to £638,719</b>

Recurring costs

18. The Commissioner will be supported by four members of staff, with recruitment anticipated to take place in year 2. In addition to remuneration for the Commissioner (of up to £126,119 as set out in Table 1), it is anticipated that staffing will comprise an office manager, two policy officers / researchers and admin support, at a total estimated recurring cost of £217,000. This staffing complement is based on the arrangements for existing Parliamentary Commissioners’ offices, and consideration of the Victims and Witnesses Commissioner’s key duties.

19. Annual accommodation costs proposed reflect rent, rates and service charge of up to £96,900 (including VAT) payable in Edinburgh on a per annum basis. A charge to cover utilities brings this to £140,000. The figure assumes a new privately leased space that has been fitted out to suit the Commissioner’s needs. There would be an additional, one-off cost (estimated at £50,000) for dilapidations at the end of a lease (which is not included in the summary tables as it is neither a

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set-up or a recurring cost, but will be paid at the end of the lease). Costs have been estimated by the Scottish Government Estates Division. Utilising existing space on the Scottish Government estate would reduce the set-up and annual charges. Recurring costs relating to the operation of the office, including IT, website, telecoms, payroll/HR services and travel/subsistence are estimated at a cost of £47,280.

20. In order to carry out their functions, the Commissioner will be required to engage with victims and survivors of crime, as well as with victim support organisations working with and for victims and survivors of crime. To aid this, the Commissioner may choose to establish an advisory group including victim representatives and victims’ reference groups. It would be for the Commissioner to determine whether to go about this, and if so, how. The Commissioner may consider it reasonable to offer members who are not in employment a payment to cover their costs and any time spent on activities associated with their roles.

21. The estimate provided for the advisory group expenses is based on an advisory group comprising 20 members, 10 of whom are individuals (rather than victim support organisations), which meets quarterly. To ensure that victims and witnesses who are unwaged are able to participate in the advisory group it is anticipated that expenses will be paid to unemployed members of the group. If the Commissioner (and Scottish Parliament) determined a payment rate of £300 per day for an unemployed member for group meetings and advisory group related activity (such as 2-3 days per quarter in total), and also agreed to provide travel expenses of approximately £50 per day, then if all 10 individual members of the advisory group were unemployed, this could result in an estimated maximum cost of £28,000 to £42,000 per year. It is very unlikely that all individual members of the advisory group would be unemployed, and holding meetings virtually (if suitable for attendees) would reduce the travel costs to be paid. The actual cost to support an advisory group would entirely depend on the Commissioner. Costs provided here can only be considered indicative.

22. Administration costs of £13,750 inclusive of VAT have been estimated – to include staff training, stationery, publicity and hospitality. The estimate is based on advice from SPCB in relation to costs incurred by other Parliamentary Commissioners.

23. The professional fees included in the table provide for external audit fees, legal fees and professional research, and are estimated at £29,000 inclusive of VAT, based on advice from SPCB. It may be necessary to review this cost once the extent of the Commissioner’s functions has been agreed by the Parliament.

Table 2 – Annual recurring costs (based on year 1)

<b>Type of cost</b>	<b>Amount</b>
Commissioner’s remuneration	£126,119
Staff salaries (this is dependent on the Commissioner; it is anticipated staffing will comprise an office manager (at £66k), two policy officers / researchers (at £59k) and admin support (at £33k))	£217,000
Accommodation (annual rent, rates, service charge and utilities)	£140,000
IT maintenance and annual SCOTS line rental	£16,600
Website maintenance	£18,000

Mobile devices and telephones	£1,840
Payroll/HR services	£4,000
Travel & subsistence	£6,840
Advisory group expenses	Up to £42,000
Other administrative costs	£13,750
Professional fees (external audit fees, legal fees, professional research)	£29,000
<b>Total costs</b>	<b>Up to £615,149</b>

### **Costs on Local Authorities**

24. It is not anticipated that there will be any new costs for local authorities as a result of these provisions.

### **Costs on Other Bodies, Individuals and Businesses**

25. It is not anticipated that there will be any new costs for other bodies, individuals and businesses as a result of these provisions.

## **PART 2 OF THE BILL (SECTIONS 24 – 29) – TRAUMA-INFORMED PRACTICE**

26. The Bill makes provision in four areas as part of steps to embed trauma-informed practice across the justice system:

- adding ‘trauma-informed practice’ as a new general principle, to which the public bodies must have regard when exercising their existing functions in relation to victims and witnesses;
- specifying that certain public bodies must report on how they are reflecting trauma-informed practice in the exercise of their functions, as part of setting/publishing their Standards of Service in relation to victims and witnesses;
- adding ‘trauma-informed practice’ to the (non-exhaustive) lists of examples of matters in relation to which the courts have the power to make rules and procedure;
- creating a requirement that the judiciary take trauma-informed practice into account when programming court business - though with the efficient disposal of business remaining the overarching priority, which will apply to both the civil and criminal courts (including the Sexual Offences Court), and across all levels of court, from Justice of the Peace to High Court.

### **Costs on the Scottish Administration**

27. Of these measures, it is expected that adding ‘trauma-informed practice’ as a new general principle is the likeliest to give rise to financial implications for justice agencies. The Bill does not mandate a specific approach to implementing provision in this area so decisions on how to implement it will be for each agency. However, some agencies have indicated that they may consider it necessary to train their staff and adjust their practices to ensure they have regard to trauma-informed practice in their work with victims and witnesses. Significant work on training staff in trauma-informed practice is already underway across the justice sector. The Victims’ Taskforce commissioned the development of ‘Trauma Informed Justice – A Knowledge and Skills

Framework for Working with Victims and Witnesses’ and the justice agencies have previously committed to implement the aims, knowledge and skills of the Framework across their workforces. The costs set out below should therefore be seen in the context of longer-term work already in train across the sector, rather than as only resulting from the provisions of the Bill.

28. Costs associated with the specific training requirements introduced by the Bill in relation to those appearing in the Sexual Offences Court have been dealt with separately in Part 5, which relates to the provisions for the new Court.

### ***Scottish Courts and Tribunals Service***

29. The ultimate steps and approach that will be taken by Scottish Courts and Tribunal Service (SCTS) will be subject to the decision of its Board and Executive Team. SCTS has indicated that one step it may consider taking in response to the new obligation for it to have regard to trauma-informed practice is to develop and roll out trauma-informed training for all staff. It is envisaged that this may consist of specific modules focused on employees’ different roles and responsibilities, and their engagement with vulnerable parties. The format, duration, content and objectives of any such training and the use of consultants and/or external providers will be subject to further development, and the costs set out in Table 3 below are illustrative only. Any training needs would be kept under continuous review, and so again the possible recurring costs set out in Table 4 are purely indicative, based on the experience of SCTS’s Education and Learning team in developing and delivering training

Table 3 – SCTS trauma-informed practice training costs (one-off)

<b>Type of cost</b>	<b>Amount</b>
Development of initial courses for all staff, in conjunction with a third-party supplier and expert consultant (includes materials, and costs of trainers’ time in delivering courses)	£100,000
Equivalent of 1 full day training for approximately 1,000 operational staff (cost of staff time using averages)	Estimated maximum of £150,000. Costs dependant on actual staff numbers
Equivalent of 1 full day training for approximately 700 non-operational staff (cost of staff time using averages)	Estimated maximum of £100,000. Costs dependant on actual staff numbers
<b>Total</b>	<b>Approximately £350,000 depending on actual staff numbers</b>

Table 4 – SCTS trauma-informed practice training costs (recurring)

<b>Type of cost</b>	<b>Amount</b>
Refresher training for operational staff, and training for new staff	£37,500 (estimated as being 25% of initial costs)
Refresher training for non-operational staff, and training for new staff	£25,000 (estimated as being 25% of initial costs)
<b>Total</b>	<b>£62,500 annually</b>

30. As part of its long-term strategy and response to the proposed new legislative requirements, SCTS may also seek to review and update the written materials and communications it produces that are used by, or otherwise impact, victims and witnesses. The aim would be to ensure the materials or methods of communication used are trauma informed in so far as is possible and practicable (acknowledging that in some instances legal requirements may limit the scope for making changes). Such materials could include applicable sections within its website and associated platforms, as well as internal and external communications. In particular, changes to forms prescribed by court rules may be required, should the relevant rules councils consider and approve of changes. The volume of material involved is significant and is ever-changing, making identification and the development of any possible programme of implementation challenging. The time and cost associated with reviewing and updating any applicable materials, in any such programme, will also depend on factors such as whether it can be undertaken internally, or requires to be carried out by, or with the assistance of, a specialist external provider. This cannot be fully determined at this stage as it will depend on a number of factors.

31. The provisions on court rules and procedure on trauma-informed practice and on trauma-informed court scheduling could also have financial and resource implications for SCTS, depending on how these powers are exercised. In particular, SCTS staff are heavily involved in the practical and procedural aspects of court scheduling. If a different approach were taken to court scheduling, this could have resource implications for SCTS, the nature and extent of which would depend on the detail of the approach. As such, no specific cost estimate can be provided for the purposes of this Financial Memorandum.

32. SCTS may continue work to expand and adapt its facilities in order to support witnesses to give evidence in more trauma-informed ways, in line with existing legislation or in response to other provisions within the Bill. This could include increasing the capacity for vulnerable witnesses to give pre-recorded evidence by commissioner,<sup>7</sup> which is under review as part of the continuing implementation of the Vulnerable Witness (Criminal Evidence) (Scotland) Act 2019. It could also include provision of facilities for witnesses to give evidence by live video link from a location outwith traditional court buildings. In addition, SCTS envisages that a wider review of its estate might be needed, to consider what reasonable adaptations could be made to support a trauma-informed approach in so far as applicable, possible and proportionate and acknowledging the nature and variety of its estate and its different users. The costs of such an exercise, if progressed in any way, cannot be quantified at this juncture.

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<sup>7</sup> Evidence by commissioner happens in advance of the trial. The court will appoint someone to act as the commissioner (the person who will hear the evidence), which will either be a judge or sheriff. The witness will be asked questions in the usual way, including any cross-examination. The evidence is recorded and this is then played to the court during the trial.



### ***Crown Office and Procurator Fiscal Service***

33. The Crown Office and Procurator Fiscal Service (COPFS) anticipate incurring costs from developing and delivering training in trauma-informed practice for their staff. As with other agencies, irrespective of the proposals within the Bill, COPFS has already committed to implementation of the ‘Trauma Informed Justice – A Knowledge and Skills Framework for Working with Victims and Witnesses’ and was actively involved in its development.

34. COPFS also envisages that adapting processes to make them more trauma informed will have resourcing implications. Examples of the kind of changes that might be made include: increased contact with victims and witnesses; revision of relevant prosecutorial policies; and revision of procedure and practices on case preparation and prosecution. Specific decisions in these areas will only be taken once the legislation is approved, and so costs arising from such resourcing implications cannot be quantified at this stage.

### ***Scottish Prison Service***

35. As with the other bodies noted above, given that the Bill is not prescriptive in how organisations demonstrate compliance with the provisions, there is a wide range of potential actions open to the Scottish Prison Service (SPS) and it is a matter for SPS as to what action to take forward. It is anticipated that any costs to SPS would arise chiefly from training in trauma-informed practice for staff involved in work relating to victims and witnesses. SPS has already developed a training package on trauma-informed practice, which it has begun to roll out. As the Bill progresses, SPS will be able to consider whether there is likely to be a need for additional training on trauma-informed practice.

36. It is not possible to quantify costs of any such additional training at this stage, as much will depend on the scope of the training, the model used to deliver it, how it sits alongside the existing training package, and how many staff receive the training. If training is only needed for the small number of staff who administer the Victim Notification Scheme, costs would be negligible and absorbed within existing budgets. However, if there were a need to provide awareness training on trauma-informed practice to staff across the estate, costs would increase accordingly.

### **Costs on Local Authorities**

37. It is not anticipated that there will be any new costs for local authorities as a result of these provisions.

### **Costs on Other Bodies, Individuals and Businesses**

#### ***Police Scotland***

38. Police Scotland anticipate incurring costs from delivering training on trauma-informed practice to its workforce. At a minimum, this would entail a dedicated E-learning package for all officers (up to and including Chief Inspector) and all staff within Police Scotland’s Contact, Command and Control Team, Criminal Justice Services Division and Concern Hubs. Drawing on comparisons with recent work, the cost of a two-hour E-Learning package for these officers and staff is estimated to amount to £1,000,000 in officer/staff time. This would be a one-off cost to

support initial implementation and it is likely that training on trauma-informed practice would subsequently be incorporated into standard training for probationers.

39. There may also be a need to provide more in-depth training – with input from external professionals - to specialist officers working in areas in which trauma-informed practice is likely to be of greatest relevance. The current cost for this kind of dedicated, external trauma-informed training is approximately £1,415 per session for 90 students. The costs of extending such training would depend on the number of officers it was felt necessary to train in this way to ensure Police Scotland could conduct its functions in a trauma-informed manner. This is an operational decision for Police Scotland and no specific cost estimate has been provided for the purposes of this Financial Memorandum.

40. It is not expected that the policies relating to court rules and procedure, or to court scheduling, will have direct financial impact on Police Scotland.

Table 5 – Police Scotland trauma-informed training costs (one-off; recurring costs unknown at present)

<b>Type of cost</b>	<b>Amount</b>
Staff time for undertaking initial E-learning package	Minimum of £1,000,000
External training for specialist officers	Cost per session is £1,415 for 90 students. Exact costs will depend on number of officers who require this training.
<b>Total</b>	<b>Minimum of £1,000,000, with additional costs dependent officers undertaking further external training</b>

### ***Parole Board for Scotland***

41. The Parole Board for Scotland (PBS) envisages that its costs are likely to arise chiefly from training Board members and staff in trauma-informed practice. Drawing on experience of previous training exercises, estimated costs for this are set out in Table 6 and Table 7, amounting to approximately £29,000 of initial costs followed by around £11,000 annual costs. PBS staff have already received training on trauma-informed practice, but refresher training and training for new staff would be required on a recurring basis, as set out in Table 7.

Table 6 – PBS trauma-informed practice training costs (one-off)

<b>Type of cost</b>	<b>Amount</b>
2 days initial training for Board members	£27,050 (2 x the day rate fee for the Chair, 20 legal members, 1 psychiatrist member and 27 general members <sup>8</sup> . Fees are not payable to the Board's judicial member)
Commissioning training	£2,000
<b>Total</b>	<b>£29,050</b>

Table 7 – PBS trauma-informed practice training costs (recurring)

<b>Type of cost</b>	<b>Amount</b>
Annual refresher training for Board members	£10,183
Annual staff training	£1,000
<b>Total</b>	<b>£11,183 annually</b>

### **PART 3 OF THE BILL (SECTIONS 30 – 33) – SPECIAL MEASURES IN CIVIL CASES**

42. The Children (Scotland) Act 2020 (“the 2020 Act”) contains provisions, not yet implemented, to enhance existing protections for vulnerable witnesses and parties in some family cases (for example, child contact and residence cases). This Bill provides for greater protections for vulnerable parties and witnesses in the civil justice system by extending the measures in the 2020 Act to civil cases generally.

43. The measures which will be extended via this Bill:

- provide that a party in a case is deemed vulnerable when they hold a civil protection order against another party or that other party is accused of, or has committed, certain types of criminal offences against them;
- lay down a presumption against a person personally conducting their own case when they have a civil protection order restraining them or are being prosecuted for or have committed certain types of offences and the person intends to personally cross-examine the protected party/victim of the offence;
- establish a register of solicitors when a person is banned from conducting their own cases;
- extend the provisions of the Vulnerable Witnesses (Scotland) Act 2004 to cover non-evidential civil hearings where there are no “witnesses”.

44. As indicated above, the provisions in the Bill on special measures will extend to civil cases generally.

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<sup>8</sup> At the time of the Bill’s introduction PBS were in the process of recruiting 12 additional Board members. The numbers used here therefore reflect the anticipated number of Board members from Spring 2023.

45. In existing civil cases, there are generally extended timescales in which the question of special measures is likely to be considered – for instance for an Options Hearing<sup>9</sup> (10 weeks from last date for the Notice of Intention to Defend) or when new Case Management in Family and Civil Partnership Action rules commence, an Initial Case Management Hearing<sup>10</sup>.

46. When the Domestic Abuse (Protection) (Scotland) Act 2021 (“the 2021 Act”) is implemented, this will have relevance to the delivery of the policy reforms in this Bill on special measures.

47. SCTS has noted that applications for domestic abuse protection orders will raise complexities as compared to existing types of cases to which special measures in civil cases will be applied. This reflects the speed with which such applications will require to be handled under the 2021 Act, the resultant impact on provision of special measures as necessary in individual situations that arise as well as more general complexity arising from the various types of hearing that could arise under the 2021 Act such as interim hearings, hearings to vary an order etc.

48. Work is ongoing to progress implementation of the 2021 Act including assessing the operational impact of the new powers in relation to protection orders and how this impacts on courts. The estimates in this financial memorandum relate to the impact on consideration of civil orders as they currently operate prior to implementation of the 2021 Act.

49. However, the Scottish Government would not expect the costs of purchasing equipment for special measures or fitting out court rooms (estimates below) to increase as a result of the 2021 Act, as the equipment and fitting out will be needed anyway. Similarly, there should be no increase in the costs of setting up the register of solicitors (again, estimates below) to be used when a party is prohibited from representing themselves as this will be required anyway. There may be an increase in the annual costs in relation to the operation of the register, as once the 2021 Act is in force there may be a need for more solicitors to act when a person is prohibited from representing themselves.

50. The Scottish Government has provided below two estimates (one low and one high) of the annual costs of running the register. The high estimate (of up to £1 million a year) is based on information from England and Wales, where a ban on personal cross-examination in civil and family cases where there has been abuse is already in operation. Similarly, Domestic Violence Protection Orders (a broad equivalent of Domestic Abuse Protection Orders under the 2021 Act) are already in force in England and Wales. Therefore, once the 2021 Act is brought into force, the annual costs of running the register may be closer to the high estimate.

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<sup>9</sup> Provision in relation to options hearings is made in Chapter 9 of the Sheriff Court Ordinary Cause Rules: [Ordinary Cause Rules \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk/ordinary-cause-rules)

<sup>10</sup> New court rules have recently been made on the case management of family and civil partnership court actions: [Act of Sederunt \(Ordinary Cause Rules 1993 Amendment\) \(Case Management of Defended Family and Civil Partnership Actions\) 2022 \(scottishciviljusticecouncil.gov.uk\)](https://www.scottishciviljusticecouncil.gov.uk/act-of-sederunt-ordinary-cause-rules-1993-amendment-case-management-of-defended-family-and-civil-partnership-actions-2022) These new rules will commence on 25 September 2023.

## **Costs on the Scottish Administration**

### ***Scottish Government***

#### *Register of solicitors when a party is prohibited from representing themselves and carrying out personal cross-examination*

51. The Scottish Government previously estimated costs for implementing the provisions on special measures to protect vulnerable witnesses and parties contained in the 2020 Act.<sup>11</sup> The estimated costs set out for the Bill which led to that Act have been used to estimate the costs in this Financial Memorandum.<sup>12</sup>

52. The 2020 Act and the Bill make provision about a person being prohibited from representing themselves and carrying out personal cross-examination. In these circumstances, where the person does not intend to obtain legal representation or is not able to do so the court must appoint a solicitor to the person from a register held by the Scottish Ministers. (The provisions also enable the Scottish Ministers to confer the duty of maintaining the register on a person).

53. The set-up costs for the register for the provisions in the 2020 Act were estimated at £200,000 (paragraph 72 of the Financial Memorandum for the Bill which led to the 2020 Act). This was based on two members of staff at A4 level dealing with recruitment and checking of qualifications being managed by a B2 member of staff with a C1 unit head being required to oversee the process and develop the policy generally. There were no accommodation costs (as the staff would be housed in existing Scottish Government estate) and a small IT cost.

54. While the register created by this Bill would need to be larger as more cases will be covered and more solicitors will be needed, it is envisaged that the one-off staffing and IT costs will be the same as there should be no need for more staffing at the set-up stage and the IT required will be the same. However, staffing costs have increased. The average annual cost of an A4 is £34,720 and so costs for two are now £69,440. The average annual cost of a B2 is £46,969. The average annual cost of a C1 is £80,257.

55. Therefore, the staffing costs in relation to setting up the register are £196,666, on the basis it might take a year to set it up. There are also IT costs for the staff in relation to installation of IT and maintenance of IT. These were estimated in 2019 as amounting to £30,000. Overall, therefore, the estimated costs of establishing the register created by this Bill are £230,000.

56. The annual ongoing costs of running the register will be higher than for the register envisaged by the 2020 Act, as outlined below.

57. This Financial Memorandum has looked at two methods of estimating costs in relation to the running of the register. The first method is a low-cost scenario and is based on the estimates for the register envisaged by the 2020 Act. The second method is a high-cost scenario and is based on estimated costs for broadly equivalent legislation in place in England and Wales.

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<sup>11</sup> [Children \(Scotland\) Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>12</sup> [Financial Memorandum Children \(Scotland\) Bill \(parliament.scot\)](https://parliament.scot)

58. In relation to the first method, the Financial Memorandum for the Bill which led to the 2020 Act estimated costs per annum of providing legal representation to a party banned from representing themselves as between £48,000 and £72,000 (paragraph 71 of that Financial Memorandum).

59. This was based on 239 cases for parental responsibilities and rights for which proof proceeded. The cost of providing legal representation to a party banned from cross-examination and the other party might be around £2,000. This was (and remains) the average cost of an ordinary divorce. Around 10-15% of litigants in family cases are party litigants. Therefore, the Scottish Government estimated the cost to be between £48,000 and £72,000 ( $2,000 \times 239 \times 10\%$  or  $15\%$ )

60. In addition, the Financial Memorandum for the Bill which led to the 2020 Act estimated the annual administrative costs of running the register. These costs were estimated at £176,000 a year (paragraphs 72 of that Financial Memorandum). These costs were largely based on staffing with the assumption being made that staffing requirements when the register was operational would be the same as when it was being established. As indicated above, staffing costs have now increased to £196,666. There are also costs in relation to maintaining IT which were previously estimated at £6,000. This suggests, therefore, that the annual administrative costs of maintaining the register envisaged by the 2020 Act would now be around £205,000 per annum.

61. This suggests total annual costs of running the register would be between £253,000 and £277,000. This is based on the estimated costs per annum of providing legal representation to a party banned from representing themselves (between £48,000 and £72,000) plus the annual administrative costs of maintaining the register envisaged by the 2020 Act, which are now estimated at being around £205,000 per annum.

62. These costs reflect the position as outlined in the Financial Memorandum for the Bill which led to the 2020 Act.

63. If the provisions on special measures in the current Bill are enacted, there would not be a significant increase in the number of persons banned from conducting their own case and carrying out personal cross-examination. Many cases do not go to proof (an evidential hearing). In addition, the number of party litigants (people representing themselves) is relatively low.

64. Contact and residence cases (covered under the 2020 Act) is the civil area where it is thought most likely that bans on persons conducting their own case and carrying out personal cross-examination would be required. This reflects that some individuals do represent themselves in these cases<sup>13</sup> and that there is research suggesting domestic abuse is alleged in around 50% of contact and residence cases<sup>14</sup>.

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<sup>13</sup> Paragraph 68 of the Financial Memorandum for the Bill which became the 2020 Act noted that: “The Scottish Government does not have hard figures on the number of party litigants but from speaking to stakeholders the Scottish Government has estimated that around 10% - 15% of litigants in family cases represent themselves”.

<sup>14</sup> See [The treatment of the views of children in private law child contact disputes where there is a history of domestic abuse](#). Page iv

65. In 2020/21, there were 2,559 cases initiated in the Sheriff Court where the main crave (ask) in the initial writ was in relation to parental responsibilities and rights (PRRs)<sup>15</sup>. In addition, there were ancillary craves in relation to PRRs, child residence and child contact in another 435 cases<sup>16</sup>. However, this Bill will cover more types of case. A particular area is civil protection orders (for example, interdicts and civil non-harassment orders) against domestic abuse. The Scottish Government estimates that there are 1,172 applications in the courts per year for civil protection orders.<sup>17</sup>

66. For the first method of estimating costs of operating a register and providing legal representation, if this measure should be extended to civil cases generally, this Financial Memorandum assumes costs double from the estimate for the 2020 Act to around £506,000 to £554,000 a year.

67. On this, the main area where costs will arise is child contact and residence cases, covered by the 2020 Act.

68. However, there will be areas not covered by the 2020 Act. As indicated above, a significant area is applications for civil protection orders against domestic abuse. There are fewer applications for civil protection orders than there are for contact and residence, which might suggest doubling the 2020 Act estimate for the annual costs of operating a register and providing legal representation is an over-estimate.

69. There will, though, also be some other types of case, in addition to cases for contact and residence or civil protection orders, and these could be in a wide range of areas as the Bill is covering special measures in civil cases generally. Therefore, a doubling of the 2020 Act estimates seems appropriate.

70. In relation to the second method in England and Wales, the Domestic Abuse Act 2021 contains provisions to ban the personal cross-examination of witnesses in certain circumstances in family and civil cases.<sup>18</sup>

71. In the Explanatory Memorandum for a recent UK Statutory Instrument on fees for solicitors when a person has been banned from cross-examination in family or civil cases the UK Ministry of Justice said in paragraph 12.3 *“our current estimate of the annual costs in England and Wales*

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<sup>15</sup> See [Supporting documents - Civil justice statistics in Scotland 2020-21 - gov.scot \(www.gov.scot\)](#) Main tables- Table 5.

<sup>16</sup> See [Supporting documents - Civil justice statistics in Scotland 2020-21 - gov.scot \(www.gov.scot\)](#) Main tables- the count of craves at tables A4, A6 and A10. These tables suggest there were another 435 cases where there was a crave for PRRs or residence or contact.

<sup>17</sup> This estimate of 1,172 is based on Table 5 and a count of craves for interdicts, interim interdicts, non-harassment orders and exclusion orders in tables A4, A5, A6, and A10 in [Supporting documents - Civil justice statistics in Scotland 2020-21 - gov.scot \(www.gov.scot\)](#) On table A10 on “other” actions, the craves for interdicts and interim interdicts have not been included as interdicts can cover a wide range of areas and these interdicts may cover other (non-abuse) areas.

<sup>18</sup> [Domestic Abuse Act 2021 \(legislation.gov.uk\)](#)

*of appointing publicly funded qualified legal representatives in civil and family proceedings is approximately between £10.2 and £11.1m”.*<sup>19</sup>

72. 9.2% of that (based on population estimates for England and Wales and for Scotland) would suggest costs of up to £1 million a year in Scotland. Population estimates have been used to reflect that civil cases where personal cross-examination is prohibited are more likely to arise in England and Wales than Scotland because of the different sizes of the jurisdictions in population terms. However, the figure of £1 million may be on the high side for Scotland, for two reasons. First of all, legal aid has been removed from a number of family cases in England and Wales which may make self-representation more likely there than in Scotland. Secondly, the annual staffing costs of running the register in Scotland (as estimated above) are more likely to be fixed. Therefore, the more significant variable is likely to be the number of cases where legal representation has to be provided because a person has been prohibited from conducting the case themselves, which, as noted above, may be less likely in Scotland. Given the information from England and Wales, if the provisions on special measures in the current Bill are enacted, the running costs in Scotland of operating a register of solicitors and providing legal representation when a person is banned from representing themselves and carrying out personal cross-examination could be between £0.55 million (first method, based on 2020 Act estimates) and £1 million a year (second method, based on estimates for broadly equivalent legislation in England and Wales).

#### *Public-facing information*

73. If the provisions on special measures in civil cases in the Bill are enacted, the Scottish Government may need to provide public-facing information on what these special measures mean in practice. However, this information would be provided on-line and so no costs are expected in relation to providing public-facing information once it has been drafted. In addition, the Scottish Government already has a commitment to produce more public facing information on what it is like to go to the family courts<sup>20</sup>. Work on providing more information on special measures in civil cases could form part of this wider work. However, there would be some costs in staff time in relation to drafting the information on special measures. It might take a B2 grade some 3 months to draft and finalise the information. The average annual cost of a B2 in the Scottish Government is £46,969 so 3 months’ work by a B2 is around £11,750.

Table 8 – Summary of Scottish Government costs (one-off and recurring)

<b>Type of cost</b>	<b>One-off</b>	<b>Recurring</b>
Setting up the register of solicitors where a person has been prohibited from representing themselves	£230,000	-
Administrative costs of running the above register and providing a solicitor from the register	-	£550,000 to £1,000,000
Providing public-facing information on special measures in civil cases	£11,750	-

<sup>19</sup> [The Prohibition of Cross-Examination in Person \(Fees of Court-Appointed Qualified Legal Representatives\) Regulations 2022 \(legislation.gov.uk\)](#)

<sup>20</sup> The commitment to produce more public-facing information on what it is like to go to the family courts is at paragraph 6.21 of the [Family Justice Modernisation Strategy](#). Work on this commitment was delayed by the pandemic.



<b>Totals</b>	<b>£241,750</b>	<b>£550,000</b>	<b>to</b>
		<b>£1,000,000</b>	

### ***Scottish Courts and Tribunals Service***

#### *Equipment*

74. There will be one-off costs for SCTS in relation to purchasing equipment. Special measures are already being provided in criminal cases and in civil cases where there are witnesses (this does not cover all hearings in civil cases as a number of civil hearings are non-evidential and there are no witnesses).

75. The special measures which may be ordered under these provisions include live television links and screens. Screens are estimated to be £3,000 per set. IT hardware is estimated at £8,000 to £10,000 per set. The costs of fitting out a court room with an evidence presentation stack (equipment used in a court room to view evidence, required to enable the court to see a vulnerable witness) is in the region of £40,000 to £50,000. There may also be costs for any additional power, network costs or additional building work and any rent, additional hardware (broadband link etc) if an external room is required.

76. When the Vulnerable Witnesses (Scotland) Bill (which became the Victims and Witnesses (Scotland) Act 2004) was introduced, the Financial Memorandum<sup>21</sup> produced by the then Scottish Executive discussed the costs of equipment:

- paragraph 90 of the Financial Memorandum noted, reflecting the provisions of the Bill, that *“There will be relatively few vulnerable witnesses in civil proceedings, largely due to the nature of many civil proceedings (such as small claims disputes) and the fact that very few cases go to proof”*;
- paragraph 110 noted that *“There may need to be a further modest provision for improved CCTV evidence in a number of key court locations”*.

77. It was considered then that 10 court houses could be equipped at a cost of £55,000 each, giving a total figure of £550,000 (paragraph 110 of the Financial Memorandum).

78. Looking at the position now for this Bill, civil courts in Scotland are the Court of Session in Edinburgh and 39 Sheriff Courts across the country. Courts have existing access to facilities such as live links and screens, with these facilities currently used most often in criminal proceedings. Their use has increased over time and, as a consequence of COVID-19, there has been greater use of video and telephone facilities.

79. SCTS had indicated that the actual number of courts rooms that may be required to be equipped to provide a local functionality is likely to exceed the 10 estimated in 2004. SCTS has noted that, alternatively, the party would be required to travel to another location to make use of

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<sup>21</sup> [\[ARCHIVED CONTENT\] \(nrscotland.gov.uk\)](#) [See the accompanying document with the title of “Explanatory Notes (and other Accompanying Documents)”].

the facilities or cases may have to be adjourned to other dates to ensure that availability, which would introduce further churn and delay into the system.

80. Therefore, assuming that around 50% of Sheriff Courts would need to be equipped as a result of this Bill, there could be a one-off cost to SCTS from purchasing equipment such as audio-visual equipment and screens in relation to special measures in civil cases of £1,650,000. This is calculated on the basis that adjusting for inflation to give the costs in 2022-23 prices<sup>22</sup>, £55,000 in 2004 is around £82,500 now. Therefore, equipping 20 court rooms at a cost of £82,500 each comes to £1,650,000. This figure takes account of the costs of screens (as indicated above, £3,000 per set); purchasing IT equipment for a court room (estimated at £8,000 to £10,000 per set); and equipping a room generally.

### *Hearings*

81. One of the triggers for special measures is when one of the parties to the case has been convicted of, or is being prosecuted for, a criminal offence against one of the other parties. If there is a dispute on this, information may need to be obtained from databases.

82. To give lawful authority to disclose information from databases (to, for example, the solicitor of the party who was the victim of the apparent criminal offence) a court order may need to be obtained, which may require a hearing.

83. However, this is likely to be relatively rare. In many civil cases where abuse is alleged, there will not be a criminal conviction or prosecution. In addition, the need to disclose information on criminal offences and prosecutions should only arise when a factual issue of this nature is disputed between the parties or there is uncertainty. When there is a dispute, the ability to seek a court order to obtain information from databases may act as an incentive to resolve the matter before any hearing takes place. If a hearing does have to take place, then the costs to the SCTS of each hearing is estimated at around £70, which is based on estimated costs for other hearings, such as divorce actions. This cost is low given that the infrastructure and staffing are already in place.

Table 9 – Summary of SCTS costs (one-off and recurring)

<b>Type of cost</b>	<b>One-off</b>	<b>Recurring</b>
Purchasing equipment and fitting out courtrooms	£1,650,000	-
Hearings to obtain information from databases if facts around criminal convictions/cases are disputed	-	£70 per hearing – such hearings are expected to be rare
<b>Totals</b>	<b>£1,650,000</b>	<b>Minimal costs</b>

<sup>22</sup> Using HMT GDP Deflators November 2022/Autumn Statement edition, available at: <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

## **Costs on Local Authorities**

84. It is not anticipated that there will be any new costs for local authorities as a result of these provisions.

## **Costs on Other Bodies, Individuals and Businesses**

### ***Scottish Legal Aid Board***

85. The Scottish Legal Aid Board (SLAB) has noted low levels of expenditure over the past 10 years met through the legal aid fund in relation to existing provisions on special measures in children's legal aid cases and civil cases. This expenditure could increase once special measures in civil cases are enhanced.

86. Under children's legal aid over the past 10 years up to 2022, SLAB approved 11 grants of expenditure on 10 cases. The average sum granted per case was £602. This suggests expenditure in the past over 10 years of £6,622 or around £660 a year.

87. In civil cases, SLAB granted 21 approvals for special measures with the average value granted being £1273. This suggests expenditure in the past over 10 years of £26,733 or around £2,675 per year.

88. Most of this relates to one of two situations. The first is taking evidence by commissioner, where the legal aid fund is meeting the costs of the commissioner and shorthand writer, in addition to the costs associated with the solicitor dealing with this work. The second is meeting costs associated with a supporter attending court with the applicant, where there are travel and accommodation costs to meet.

89. There could be more instances of the types of specific situations described above. There could be costs in relation to extending special measures in non-evidential hearings if a party who has, for example, experienced domestic abuse wishes to have a supporter. In particular, this may happen at Child Welfare Hearings in child contact and residence cases, as Child Welfare Hearings are generally non-evidential.

90. In practice, the Scottish Government would expect there to be a low demand for supporters at Child Welfare Hearings. Child Welfare Hearings are usually relatively short and so parties may feel less need for support. (The Scottish Government is not aware of any official statistical information on the average length of Child Welfare Hearings but anecdotally they tend to last between 30 minutes and an hour. A contact or residence case may have a number of Child Welfare Hearings).

91. Most parties are legally represented which may further reduce the need a party have for a supporter. In addition, even where a party has a supporter, some supporters may not need to claim travel and accommodation costs.

92. The latest SCTS figures suggest that 15,207 Child Welfare Hearings called in 2021/22. As indicated above, there is research suggesting domestic abuse is alleged in around 50% of contact

and residence cases in court which suggests allegations of domestic abuse could be a feature of around 7,600 Child Welfare Hearings a year.

93. If a supporter claims travel and subsistence of £1,273 (the average value of SLAB current approvals in relation to special measures in civil cases) in 1% of Child Welfare Hearings (76) where domestic abuse has been alleged, this would suggest expenditure to the legal aid fund of £96,748, assuming all of the parties with supporters are legally aided. This expenditure could be incurred even without the provisions on special measures in this Bill, as contact and residence cases are included in the provisions on special measures in the Children (Scotland) Act 2020. The figure of £1,273 may be high. This figure is more likely to reflect the cost of taking evidence by commissioners than the costs of supporters and, in cases where supporters only are needed, the costs per case may be lower.

94. Some of the parties may not be legally aided and costs in these circumstances are considered below.

95. As indicated above, there could be additional hearings in relation to obtaining lawful authority to disclose information from databases. However, this is likely to be relatively rare. The need should only arise when a factual issue of this nature is disputed between the parties or there is uncertainty. When there is a dispute, the ability to seek a court order to obtain information from databases may act as an incentive to resolve the matter before any hearing takes place.

96. If an additional hearing is required in relation to obtaining lawful authority to disclose information from databases, there could be costs to the legal aid fund of around £150 per hearing per assisted person.

Table 10 – Summary of SLAB costs (recurring)

<b>Type of cost</b>	<b>Cost</b>
Legal aid in relation to supporters at hearings	£96,748 per annum
Legal aid for parties in hearings to obtain information from databases if facts around criminal convictions/cases are disputed	£150 per hearing per assisted person– such hearings are expected to be rare
<b>Totals</b>	<b>£96,748 plus minimum costs relating to hearings</b>

### ***Individuals***

97. There could be costs to individual parties to a case if the type of situations outlined in relation to SLAB above are not met through the legal aid fund. If a supporter does claim travel and subsistence from a party who is not receiving legal aid, the cost to the party could be around £1,273 (although, as indicated above, this figure may be on the high side). There may in some instances also be costs falling on individuals of around £150 if an additional hearing is required in relation to obtaining lawful authority to disclose information from databases. Those that can least afford these impacts should be eligible for legal aid.

Table 11 - Summary of costs to individuals

<b>Type of cost</b>	<b>Amount</b>
Travel and subsistence claims from supporters made to a party who is not receiving legal aid	£1,273 per supporter
Cost for parties who are not receiving legal aid for hearings to obtain information from databases if facts around criminal convictions/cases are disputed	£150 per hearing – such hearings are expected to be rare
<b>Totals</b>	<b>Dependent on number of claims / hearings</b>

#### **PART 4 OF THE BILL (SECTIONS 34 – 36) – CRIMINAL JURIES AND VERDICTS**

98. The Bill removes the not proven verdict from the criminal courts in both solemn and summary proceedings as well as reducing the size of juries from 15 to 12 jurors and changing the majority required for a conviction.

##### **Abolishing the not proven verdict and increasing the majority required for conviction**

99. Increasing the majority required for conviction and moving to a two-verdict system are not expected to have financial impacts for the Scottish Administration, local authorities, or other bodies, individuals or businesses, except for minor costs associated with updating written materials and IT for COPFS/SCTS.

100. It is not possible to precisely set out all possible indirect costs. This is because if the reform is agreed by Parliament, it will be for the courts (and juries in solemn proceedings) to continue to make decisions in individual cases. Exactly how they will make such decisions when only two verdicts are available and a different majority size is required for juries to convict, is not something that can be modelled with any degree of certainty.

101. For example, abolishing the not proven verdict and increasing the majority required for conviction may have broadly neutral impact on convictions, in which case it would have relatively minor resource implications. However, it is possible that in a reformed system the balance may not be exactly as it currently is - resulting in either more or less convictions than would have otherwise been the case.

102. In these scenarios, even a minor change in conviction rate could lead to substantial costs or savings as the costs associated with a conviction can often be large, especially for cases tried in front of a jury where a lengthy prison sentence is a likely outcome<sup>23</sup>. However, there is not a robust

<sup>23</sup> The Scottish Prison Service estimate the cost of housing a prisoner for one year is in the region of £40,000 - SPS Annual Reports and Accounts 2021-22, page 125

evidence base that could be used to inform a prediction of how big an impact these measures could have (or even what direction the impact would be).

## **Reducing the number of jurors to 12**

### **Costs on the Scottish Administration**

#### ***Scottish Courts and Tribunals Service***

103. There will be a cost impact for SCTS, which relates to the cost of servicing the jury system.

104. In Scotland there are six main allowances which jurors may be entitled to:

- travel - including public transport, own transport or taxi;
- subsistence - for the extra cost of meals etc. bought while attending court;
- loss of earnings or benefits - sums payable are based on fixed rates for time spent on jury service;
- child minding adult carer allowance;
- “other expenses”.

105. The figures in the table below show the total costs of jurors’ claims over the last five financial years.

Table 12 – SCTS Annual Accounts: Payments to Jurors<sup>24</sup>

<b>Year</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
Total Expenditure (Payments to Jurors)	£3,891,000	£3,782,000	£3,784,000	£1,374,000	£3,517,000

106. Due to the wide range of work being carried out to address the backlog of cases, as well as the inclusion of data from 2020 - when the number of jury trials were unusually low due to the impact of COVID-19 - it is likely that in coming years the numbers of solemn trials will be higher on average than during the period from 2017-22. Therefore, the amount of expenditure stated above is likely to be an underestimate, however this will be offset to some degree by:

- the introduction of remote balloting which requires fewer jurors having to travel and physically attend court (and seek compensation for this) will reduce the overall juror allowances, thus reducing the savings associated with moving to 12 jurors;
- savings associated with the recent introduction of the Digital Expenses Payments System (DEPS) which will mean that jurors will complete and submit an online expense claim, which will then be processed by the central Digital Payments team

<sup>24</sup> [scts-annual-report-and-accounts-2021-22.pdf \(scotcourts.gov.uk\)](https://scotcourts.gov.uk/scts-annual-report-and-accounts-2021-22.pdf)

rather than by local court staff. This will offer cost savings in relation to cheques no longer having to be issued (i.e., postage and banking charges), as well as time savings for local court staff.

107. Based on the above data, a 20% reduction in jurors could amount to savings for SCTS of approximately £749,000 per year.<sup>25</sup>

108. It should be noted that the new requirement for juries to reach a qualified majority could lead to their deliberations taking longer which would have a financial impact. However, it is not possible to quantify this as SCTS does not have data regarding the costs of deliberations over time, and any such effect could be reduced or cancelled out entirely by the time saved by having three fewer jurors participating in deliberations.

109. There would also be some relatively small financial implications in terms of amending advice leaflets for jurors and provision of judicial training (via the Judicial Institute), as well as consideration of amending the online functionality for jurors, for example, regarding citation and expenses.

### ***Crown Office and Procurator Fiscal Service***

110. It is not anticipated that there will be any new costs for COPFS as a result of the jury provisions in the Bill other than some relatively small financial implications in terms of updating training materials and advice leaflets for victims and witnesses.

111. Any reforms that could increase the likelihood of a trial being deserted so that a new trial would be required would have a cost to COPFS in terms of preparing and prosecuting any re-trial. However, the approach being proposed which would allow juries to fall to nine jurors with the majority required for conviction remaining at seven, with the decision to proceed made by the relevant court after hearing submissions from defence and prosecution, is intended to minimise such occurrences.

### **Costs on Local Authorities**

112. It is not anticipated that there will be any new costs for local authorities as a result of these provisions.

### **Costs on Other Bodies, Individuals and Businesses**

113. It is not anticipated that there will be any new costs for other bodies, individuals and businesses as a result of the jury provisions in the Bill, however there will be various savings from the reduction in jury size as set out below.

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<sup>25</sup> Due to the anomalously low expenditure in 2020-21 as a result of the outbreak of the Coronavirus pandemic, that year has been excluded from these average approximate savings.”

***Businesses and the third sector***

114. SCTS data for the calendar years 2017 to 2022 shows that on average there were 464 evidence-led trials at the High Court, and 880 at Sheriff solemn level.<sup>26</sup> Therefore, on average over this period, approximately 20,160 people participated as jurors in evidence-led trials (15 people each for 1,344 trials). It should be noted that these figures do not show those who attended court for balloting but did not ultimately participate in a jury.

115. SCTS data from March 2021 shows that the average trial duration at the High Court is six days and the average trial at Sheriff solemn is three days,<sup>27</sup> therefore over the period 2017-2022 around 80,000 days were spent per year by people on jury duty in Scotland (41,760 for High Court trials and 39,600 for Sheriff solemn trials).

116. Reducing the amount of time spent on jury duty by 20% would free up approximately 16,000 days per year for citizens to spend in other pursuits including employment, caring responsibilities and leisure, which would in turn have positive impacts on the economy and people's wellbeing.

117. Due to the wide range of work being carried out to address the backlog of cases, as well as the inclusion in the data for 2020 when the number of jury trials were unusually low due to the impact of COVID-19, it is likely that in coming years the numbers of solemn trials will be higher on average than during the period from 2017-22. Therefore, the amount of time saved stated above is likely to be an underestimate in the early years following implementation if more trials than during the 2017-2022 period are progressed.

118. The financial impact of reducing the time spent on jury duty will vary from individual to individual depending on a range of personal factors including: whether their employer compensates them for time spent on jury duty; how the juror allowances compare to their typical income; and how comfortably they are able to accommodate any disparity, as well how much they must spend on factors such as travel and childcare.

119. Reducing the amount of time spent on jury duty by 20% could result in savings for all businesses, third sector, and public sector organisations across Scotland who would have to excuse fewer staff for this civic duty, as well as reduced upheaval making alternative staffing arrangements, and lower spending for those employers who opt to compensate employees during periods of jury service.

120. It is likely that jury duty will have particular impact on both larger businesses which may have to accommodate on average more members of staff on jury duty, and smaller businesses which may find the inconvenience of absent employees more of a burden.

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<sup>26</sup> [SCTS data 1A](#)

<sup>27</sup> [final-covid-modelling-report-cover-18-03-21-1915.pdf \(scotcourts.gov.uk\)](#)



## **PART 5 OF THE BILL (SECTIONS 37 – 62) – SEXUAL OFFENCES COURT**

121. The Bill seeks to create a new Sexual Offences Court (“the Court”) to better support complainers to give their best evidence, improve judicial case management and require specialist trauma-informed training for all personnel, judges and legal professionals appearing in the Court.

122. The Court will be distinct from the High Court and Sheriff Courts, and have Scotland-wide jurisdiction to hear solemn level cases involving sexual offence charges<sup>28</sup>, as well as any accompanying non-sexual offence charges (including murder). The Bill also makes provision for judges sitting in the Court to have sentencing powers up to and including life imprisonment and the power to issue an Order for Lifelong Restriction (OLR).

123. The Bill aims to more flexibly use judicial resources and enables the Lord Justice General to appoint High Court judges, temporary judges, sheriffs principal and sheriffs to sit in the Court and hold office as Judges in the Sexual Offences Court, subject to individuals fulfilling specific criteria including the requirement to have undergone training in trauma-informed practice. Advocates, and solicitor advocates may appear in the court, subject to the requirement of having undergone specified training. Solicitors may appear in a restricted range of cases, again subject to training requirements set out in the Bill.

124. In order to estimate the likely caseload of the Court, Table 13 below sets out the number of people proceeded against on indictment in the High Court and Sheriff Courts in the three years preceding the COVID-19 pandemic<sup>29</sup>, where the main offence was rape, attempted rape or certain other specified sexual crimes which would fall within the jurisdiction of the Court once established.

Table 13 – People proceeded against on indictment for sexual crimes in the High Court and Sheriff Courts, where the main crime was rape, attempted rape, sexual assault or other sexual crime within the proposed jurisdiction of the Sexual Offences Court<sup>30</sup>

<b>Total prosecuted</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>
High Court	353	425	390
Sheriff solemn	186	234	312
<b>Total</b>	<b>539</b>	<b>659</b>	<b>702</b>

125. There are however limitations to this applicability of this estimate as an indication of the court’s caseload:

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<sup>28</sup> As they are defined in the Bill

<sup>29</sup> Data for 2020/21 and 2021/22 has not been provided due to the adverse impact of the Covid-19 pandemic on business volumes.

<sup>30</sup> Table populated using data from the Criminal Proceedings Statistics and which show the number of people who have been prosecuted for specific sexual offences where those offences constitute the primary charge on the indictment. The table excludes offences which are not within the jurisdiction of the court notably taking, distributing, possession etc of indecent images of children and possession of extreme pornography.

- the Bill enables rather than requires prosecutors to indict cases involving sexual offences to the Court, so - subject to the jurisdiction as set out in the Bill - it will be the decision of the prosecutor which will determine if a case is to be indicted to the Court;
- fluctuations in the reporting of sexual offences year-on-year;
- limitations in data means that the table does not include those proceeded against in cases which included a sexual offence on the indictment but where that was not categorised as the ‘main offence’ (the Bill gives the Court jurisdiction to hear all specified sexual offence cases prosecuted on indictment whether they are the ‘main offence’ or not and will therefore capture a larger pool of cases than illustrated in the table);
- limitations in the data available for specific offence types means people proceeded against for certain offences within the proposed jurisdiction of the Court are not included in the figures contained within Table 13 - specifically, data on offences committed under section 1(1) of the Domestic Abuse (Scotland) Act 2018 which feature a substantial sexual element, the Female Genital Mutilation (Scotland) Act 2005 and the Health and Care Act 2022 are not included in this table.

126. The costs estimated in this Financial Memorandum may also be impacted by any decisions made to phase implementation of the Court or its requirements, such as through gradual implementation of the Court’s jurisdiction over time. Phasing implementation of the Court to initially extend to High Court level cases only, with a view to expanding to Sheriff solemn cases in time, may provide a way to establish the Court and start to realise its ambitions and deliver improvements to complainers. This would also enable the Court to develop best practice in order to inform its expansion.

127. While a phased approach to implementing the Court will mitigate a substantial proportion of the cost pressures emerging in the early years of the Court, specific costs associated with the set-up and resourcing of the Court will, however, be incurred upon establishment of the Court irrespective of whether a phased approach to implementation is adopted. Careful consideration will be given to the pace of implementation, including collaboration and engagement with justice agencies. The Court is designed to allow judicial and other court resources to be used more flexibly, in part to alleviate pressure on the High Court, and any implementation strategy will seek to maximise those opportunities.

128. Justice agencies spend significant resource meeting the demands of the existing caseload of serious sexual offences. The Bill seeks to redistribute that existing caseload across a reformed court structure, including the Sexual Offences Court, which will be more effective at managing cases and improve the experience of complainers.

129. It is not, at this stage, anticipated that new court buildings or additional judicial resource is needed to establish and operate the Court. Rather, the model of specialist court provided for by the Bill is intended to facilitate a more flexible use of the existing court estate as well as of other court and judicial resources.

130. Although it is anticipated that the introduction of specialist approaches will deliver improvements in judicial case management that could result in greater efficiency and potentially deliver some savings, it is not possible at this stage to forecast the nature or extent of these savings as these will depend on operational decision-making by justice agencies and the judiciary, as well as the variables inherent in individual cases.

131. It is anticipated that costs will emerge in relation to the following areas:

- establishing and operating the Court;
- prosecution of cases within the Court;
- costs to the Scottish Legal Aid Board; and
- extending the power to impose Orders for Lifelong Restrictions to judges sitting in the Court.

132. The increased use of pre-recorded evidence as provided by the Bill will also have cost implications. However, the proposals around the use of pre-recorded evidence by the Court builds on previous reforms introduced by the Vulnerable Witnesses (Criminal Procedure) (Scotland) Act 2019 (“the 2019 Act”) to expand the use of pre-recorded evidence from child and ‘deemed vulnerable’ witnesses in serious cases. To date, the 2019 Act has been implemented in respect of all child witnesses giving evidence in the most serious cases being heard in the High Court. The 2019 Act gives Scottish Ministers the power to extend the presumption in favour of pre-recording to other child and ‘deemed vulnerable’ witnesses, which includes adult complainers in cases involving solemn level sexual offences. The phased implementation of the 2019 Act is underway although has been inevitably affected by the COVID-19 pandemic and its impact on the justice sector.

133. The Bill seeks to build on and complement the 2019 Act and proposes that a presumption in favour of pre-recorded evidence will apply to all vulnerable complainers giving evidence in the Court. As Scottish Ministers already have the power to extend the presumption in favour of pre-recording evidence to complainers in serious sexual offences, there is considerable overlap between the impact of the provisions in the Bill and the impact already anticipated of provisions in the 2019 Act. However, the Bill will lead to a greater use of pre-recording than anticipated by the 2019 Act as the jurisdiction of the Court is slightly wider than the list of offences set out in the 2019 Act.<sup>31</sup>

134. The expansion of pre-recorded evidence will inevitably come with additional costs for justice agencies although, given uncertainties around indictments to the court, it is not possible to be specific about the extent of the increase in pre-recorded evidence which will be caused by the Bill - as opposed to previous reform - and the costs arising from this as a result.

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<sup>31</sup> Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2020 draft implementation plan shared with the Scottish Parliament’s Criminal Justice Committee [J-S5-18-VW-31A-SG.pdf \(parliament.scot\)](#)

## **Costs on the Scottish Administration**

### ***Scottish Courts and Tribunals Service***

#### *Set-up costs*

135. The costs of establishing and operating the Court will be incurred by SCTS. The exact costs associated with doing so are subject to a number of factors, in particular the caseload of the Court, and are therefore difficult to fully assess.

136. While the Court will, for the most part, utilise and draw on existing infrastructure, SCTS will incur some fixed, upfront costs associated with ensuring that the necessary systems are in place to allow the Court to operate.

#### *Infrastructure*

137. In particular, it will be necessary to upgrade the existing SCTS IT and file management system (COPII) to ensure that it has the necessary capabilities to support the Court. SCTS has estimated that these updates will likely cost a between £300,000 - £600,000. This range is predicated on SCTS's recent experience of upgrading elements of its file management systems, although this is subject to a number of variables, such as the extent of the modifications required as well as engagement with third party suppliers whose services will be required to make the necessary upgrades as well as other factors which make potential costs associated with the upgrade hard to estimate with any degree of certainty. The IT upgrades will need to be in place in advance of the Court becoming operational.

138. It is envisaged that some replacement and upgrading of signage will be needed to the locations within the current SCTS estate in which it is currently anticipated that the Court or associated facilities will be situated. The volume and caseload of the Court will impact the number of facilities requiring such changes. Based on the current anticipated caseload, it is expected that these upgrades will be required to a minimum of 22 court facilities across Scotland at an estimated cost of £45,000, which equates to around £2,000 per location or facility. These costs are expected to be incurred as a result of amending signage and other presentational changes that may be required to support the identification of facilities within the current court estate and are based on costs that were incurred in adapting signage to support the new evidence by commission facilities.

139. Adaptations will also be required to the jury citation process to reflect the creation of the Court. Figures from SCTS indicate that this is likely to result in a one-off cost to SCTS of around £6,000 and which will arise from the cost of deploying staff to make the necessary changes to the citation system.

#### *Staffing*

140. The creation of the Court is not expected to require the appointment of additional court staff but rather the aim is to resource it by the relocation of existing staff from the High Court, Sheriff Courts and the organisation generally. The process will generate additional spending commitments for SCTS that will primarily arise from the need to ensure that staff have appropriate skills and experience to ensure that the Court functions effectively, such as through the embedding of trauma-informed approaches. The number of staff required to support the Court and the costs associated

with this will be driven predominantly by the Court's caseload which, for the reasons set out above, is difficult to estimate at this stage. The cost estimates used in this Financial Memorandum are based on an assessment of the minimum number of staff required to support the Court.

141. SCTS has indicated the need to establish a project team in order to progress the work associated with creating the Court. Projections indicate that this will cost around £218,000 over two years in order to pay and resource the team responsible for implementing the Court. The cost estimates cover the salary, NI and pension contributions associated with the redeployment of 2 full-time members of staff for the equivalent of 1.5 years, whose roles will focus on making preparations within SCTS for operationalising the Court.

142. SCTS has indicated that the implementation of enhanced trauma-informed training specifically for staff associated with the Court will likely incur an upfront cost in the region of £125,000, arising from the development and implementation of an appropriate training package for staff. The precise cost is contingent on a range of factors, including: the number of staff to be trained; the final outline and objectives set down for the course; its format and duration; and the fees charged by those contracted to develop and deliver the training. This cost is separate from the training it is currently envisaged that SCTS staff will undergo in line with the organisation's potential response to the trauma-informed practice provisions featured in the Bill. Staff will be required to complete this training before the Court becomes operational to ensure trauma-informed approaches are embedded from the outset.

143. SCTS has also identified estimated costs arising from the anticipated reallocation of staff from within the organisation to the Court. The estimated caseload indicates that the creation of the Court may result in around 300 cases per year moving from the Sheriff Courts.<sup>32</sup> This will require changes to operational roles and responsibilities of staff and for there to be a reallocation of a number of staff within the organisation to support the Court, particularly in relation to clerks. Initial estimates by SCTS of the staffing resource requirements based on anticipated caseload indicate that around 25 clerks of court, as well as additional court and administrative officers, will be needed to manage the business of the Court, although it is not possible to provide specific figures at this stage. Staff who may transfer from the Sheriff Courts will need to undergo training on a variety of matters including High Court practice and procedure, which is to be a foundation for the new Court's practices and procedure. This will particularly be the case for any clerking staff from the Sheriff Court who may be appointed as clerk to the new Court. The costs associated with redeploying 25 clerks as well as other court staff to support the Sexual Offences Court is expected to cost around £235,000.

144. More significantly, there will be a requirement to regrade any clerks from the Sheriff Courts who may be allocated to the Court. This is necessary to reflect the enhanced skills and experience of those required to work in the Court given that it will operate using new procedures which are based on High Court procedure rather than Sheriff Court procedure - the difference between which is already reflected in the SCTS pay structure - and will hear cases involving some of the most serious offences. SCTS estimate that regrading of some staff, which will also ensure parity with clerks deployed to the Court from the High Court, is expected to cost around £465,000 based on an estimated basic complement of 24 clerks. This figure includes costs associated with the appointment of a designated clerk for the Court. Additional costs to provide uniforms and

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<sup>32</sup> As per Table 13 above

equipment to those allocated to the Court will likely be incurred, and which SCTS has estimated at £50,000.

145. Taking into account likely regrading and additional training for staff reallocated from across the organisation to support the Court, as well as equipment costs, SCTS estimates that resourcing the Court will incur a set-up cost in the region of £750,000 to ensure the anticipated initial complement of staff required to support it are trained and deployed ahead of the Court becoming operational.

146. The full range of staffing costs that are expected to be incurred on a one-off basis in the course of setting up the Sexual Offences Court are set out at Table 14 below and show an estimated cost of £1,093,000 associated with the re-deployment of staff, delivery of trauma-informed training and establishment of a project team to manage delivery of the Court.

#### Recurring costs

147. Recurring costs, including staffing, arising from the Court are contingent upon the number of cases it is likely to hear and the choices that are made as to how the siting of a case in the Court creates additional costs to the way these cases currently proceed.

#### *Staffing*

148. Funding will be required on an ongoing basis to periodically update and refresh staff training on trauma-informed practice and the practices and procedures of the Court, as well as to ensure provision of training for new recruits in response to staff turnover. SCTS estimates indicate that this is expected to be a recurring cost of around £27,000 per annum, although there is a significant degree of uncertainty surrounding this figure given that costs for delivery will be subject to a number of variables. These include: the number of staff involved; the caseload of the Court; the ultimate design, objectives and format of the principal training referenced above; and agreement with any appointed training provider.

149. Ongoing costs of around £465,000 per annum will also be required to finance pay supplements (including pension and NI contributions) to fund changes to staff roles and responsibilities to support the Court, as well as ongoing costs associated with the purchasing of uniforms for staff. This figure also includes the cost of appointing a principal clerk for the Court.

#### *Training of the judiciary*

150. Training of the judiciary is the responsibility of the Judicial Institute for Scotland, which operates under the authority of the Lord President. It is anticipated at this juncture that judicial office holders appointed to the role of a Judge in the Sexual Offences Court will be required to undergo enhanced training in a range of different areas, such as trauma-informed practice, to support them in developing the knowledge and skills required to ensure specialist approaches are embedded in the practices and procedures and judicial management of cases heard in the Court. The precise scope and content of training that Judges in the Sexual Offences Court will be required to undergo, as well as the resources and toolkits that will be required to support them, will require to be further developed and are not known at present. The costs associated with training Judges in the Sexual Offences Court will also likely be impacted by the volume of individuals appointed to

preside over cases in the Court. The cost of developing and delivering training to Judges in the Sexual Offences Court is therefore not known at this stage.

### *Ground Rules Hearings*

151. Additional costs to SCTS will also arise as a result of the introduction of Ground Rules Hearings (GRHs) for all cases in the Court in which a vulnerable witness is required to give evidence. The purpose of GRHs is to ensure that attention is given to preparation for the examination of witnesses and to ensure that this is done in a way that is respectful and avoids creating undue distress for the witness in order to limit the risk of re-traumatisation. GRHs are already required where a witness is giving evidence in advance of trial by a commissioner, and the expansion of the use of this special measure will be achieved through further implementation of the 2019 Act. Expansion of GRHs will therefore arise from further implementation of the 2019 Act as well as the provisions in the Bill.

152. It is envisaged that GRHs will typically be conjoined with preliminary hearings, with separate GRHs being an exception. This mitigates the impact of this measure in not requiring GRHs to be scheduled in addition to preliminary hearings but may result in an increase in the length of preliminary hearings, resulting in a reduction in the number of these that can be scheduled in a single day. This may result in the need to run additional preliminary hearings courts, which will have resource implications for SCTS arising from the costs of running additional court room(s) to manage longer preliminary hearings. It is estimated that the cost to SCTS of conducting a GRH is £178 in the High Court when it is conjoined with the Preliminary Hearing. Given the challenges in predicting case volumes and the number of additional cases to which the requirement to conduct a GRH will apply we cannot quantify actual resource implications and costs to SCTS arising from this.

Table 14 – Summary of SCTS estimated costs (one-off and recurring)

<b>Area</b>	<b>One-off costs</b>	<b>Recurring costs (per annum)</b>
<b>Resource</b>		
Staffing	£750,000	£465,000
Trauma-informed Training	£125,000	£27,000
Project Team	£218,000	£0
<b>Infrastructure</b>		
IT Systems	£300,000	£0
Designated Court Adaptations	£45,000	£0
Jury Citation Process	£6,000	£0
<b>Totals</b>	<b>£1,444,000</b>	<b>£492,000</b>

### ***Crown Office and Procurator Fiscal Service***

153. In recent evidence submitted to the Criminal Justice Committee, COPFS set out that sexual crime makes up almost 70% of High Court cases and a significant proportion of cases that are prosecuted in the Sheriff solemn courts.<sup>33</sup> Far from routine, the investigation and prosecution of these cases is challenging and demanding both in terms of complexity and sensitivity. The cases require: “*significant resource to underpin a service which, in every case, meets the needs of victims, allows for intensive and detailed investigation, high-quality advocacy skills and appropriate administrative case support and preparation, all within challenging statutory time limits.*”<sup>34</sup>

154. The creation of the Court will not, of itself, create new cases for COPFS. It seeks to gather Sheriff solemn level cases together with High Court level cases to allow all to be heard in the same specialist environment. Significant resource is already invested by COPFS in its approach to serious sexual offences cases which will be redirected to the Court. However, the Court will not be cost neutral for COPFS. In particular, costs will arise in the following areas:

- provision of enhanced training for prosecutors appearing in the Court;
- changes to existing processes and practices in the preparation and prosecution of cases, particularly cases which would have previously been prosecuted at Sheriff solemn level.

#### *Provision of enhanced training*

155. An underpinning principle of the Court is that all who appear in it will be required to complete an appropriate level of trauma-informed/specialist training.

156. While the Bill does not place a specific requirement on prosecutors to have completed trauma-informed training before gaining rights of audience to the Court, it does place a requirement on the Lord Advocate to publish a statement in respect of the trauma-informed training that prosecutors appearing in the Court will undertake. The extent of this training will be determined by the Lord Advocate and, until that point, the cost to COPFS cannot be quantified as it will depend on the extent of the training, including how many people require to undergo it. (At present there are approximately 90 Advocate Deputes and approximately 700 legal staff within COPFS although how many of those prosecutors will appear in the Court is clearly a matter for the Lord Advocate.)

#### *Changes to existing process and practices*

157. The practices and procedures of the Court set out by the Bill will be further supplemented by the work of the Criminal Court Rules Council and the issuing of practice notes directions, as well as any Acts of Adjournal made by the High Court of Justiciary to regulate the proceedings of the Court. As such, it has not been possible to quantify in full the cost of the changes to COPFS practice that may be required through the creation of the Court. However, some key observations can be made.

158. The Court is designed to embed specialism and raise standards, providing an opportunity for wholesale improvement and transformational change. If this ambition is to be maximised, this

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<sup>33</sup> [4280 \(parliament.scot\)](#)

<sup>34</sup> *ibid*



will inevitably result in a more resource intensive process for prosecutors in their approach to the preparation and presentation of cases and in terms of support and communication with witnesses and complainers.

159. This will be seen most acutely in the changes required in the approach to cases which would otherwise have been prosecuted in the Sheriff solemn courts. There is an existing significant resource differential between these cases and those that are prosecuted in the High Court. By way of illustration, the average cost to COPFS in 2020/21 of the preparation and prosecution of a sheriff solemn court case was £14,750 compared to an average cost of the preparation and prosecution of a High Court case which was £106,500.<sup>35</sup>

160. There is an inherent difficulty in relying on average case costs which do not in a meaningful way reflect the changes that may be required in the treatment of individual cases. Changing the forum of prosecution does not change the difficulty or complexity of a case (for example, in terms of the number of complainers/witnesses or the presence of forensic evidence) and the same evidential rules will apply. However, it is reasonable to assume that there will be additional costs incurred to ensure that all cases are prepared to the required standard of the Court, particularly where it is anticipated that the Court will develop and implement different procedures and practices than currently exist in the existing High Court and Sheriff solemn court. It is considered these additional costs will not elevate average case costs to those arising for High Court cases, but it would be appropriate to acknowledge the average case cost may be higher than for an existing case being dealt with as a Sheriff solemn case (£14,750).

161. Phasing of the implementation of the Court, potentially to extend to only High Court cases initially, will allow for a greater understanding of the Court's practices and procedures and the changes required to the existing COPFS approach to the prosecution of Sheriff solemn level sexual offence cases.

162. Any significant increase in the use of pre-recorded evidence will have significant resource implications for COPFS. While to a great extent, irrespective of the Bill, these would have been incurred from further implementation of the 2019 Act, it is recognised that the ambition of the Court is to better support complainers to give their best evidence and that an increased use of pre-recorded evidence, will be an important aspect of that approach.

163. The proposed extension of Ground Rules Hearings (GRH) to all cases calling in the Court where evidence is to be given by a vulnerable witness will have a resource implication for COPFS in preparing for and presenting at further procedural diets. This approach differs from the current process which requires such hearings only where evidence is to be taken in advance of trial by a commissioner under section 271I of the Criminal Procedure (Scotland) Act 1995. Any phased implementation of this requirement will mitigate the resource impact in the early stages of the Court. Further mitigation will arise from the ability to conjoin GRHs with preliminary hearings.

164. It is anticipated that, over time, the Court will develop an approach to judicial case management and practices that contribute towards the more efficient disposal of business, which in turn is expected to reduce costs – for example, by reducing churn of cases. This will in time

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<sup>35</sup> Costs provided by COPFS Finance Department

potentially present savings for COPFS in terms of reducing the occurrence of avoidable delay and the consequential pressures that places on resources required for repeated hearings and measures needed to maintain contact and engagement with complainers and witnesses over unnecessarily prolonged court processes.

### **Costs on Local Authorities**

165. It is not anticipated that there will be any new costs for local authorities as a result of these provisions.

### **Costs on Other Bodies, Individuals and Businesses**

#### ***Scottish Legal Aid Board***

166. The Bill provides for consequential amendments to the Legal Aid (Scotland) Act 1986 to allow the Court to come under the scope of legal aid provision. Further provision for legal aid will be achieved through future legal aid regulations.

167. Under current arrangements, an accused who is granted legal aid in a case indicted to the High Court automatically receives an enhanced entitlement to legal aid for the purposes of instructing an advocate or solicitor advocate. This reflects the fact that solicitors are not entitled to appear in the High Court. In the Sheriff Courts, where cases can be conducted by solicitors as well as advocates/solicitor advocates, an accused wishing to receive funding to instruct an advocate/solicitor advocate must apply to SLAB for sanction to do so. As the Sexual Offences Court brings cases together that would previously have been heard across these two courts, consideration will be given as to how to best reflect and provide for this in terms of legal aid entitlement across the range of cases the Court will hear.

168. Any change to the balance of cases to which ‘automatic sanction’ for counsel applies, as opposed to cases in which applications are considered on a case-by-case basis, will have cost implications for SLAB arising from having to consider and process more applications. Any change to the balance of cases in which enhanced legal aid is granted will also have cost implications.

169. It is not possible to be specific about the extent of these costs, however, as the number of applications that require to be processed and the number of cases that will receive sanction for counsel will be determined by the regulations that are put in place to support the Court and how the criteria for sanctioning counsel is applied by SLAB in the context of the specific applications made.

170. The provisions included in the Bill that require a Ground Rules Hearing (GRH) to take place irrespective of whether evidence is pre-recorded or given in court will incur additional costs to SLAB associated with the provision of legal aid funding in relation the preparation and conduct of these hearings (which may be conjoined with preliminary hearings). The total cost to SLAB of conducting a GRH in all cases indicted to the Sexual Offences Court is forecast to be £58,500<sup>36</sup> based on current legal aid fee entitlement, although this figure also includes those GRHs that would occur as a result of future implementation of the Vulnerable Witnesses (Criminal Evidence)

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<sup>36</sup> This is predicated on the cost of extending the Preliminary Hearing by one hour.

(Scotland) Act 2019 and so does not provide specific insight into expenditure arising from the Sexual Offences Court. The number of additional GRHs the Bill will generate by expanding these hearings to all vulnerable witnesses giving evidence in the Court cannot at this stage reliably be predicted and so it is not possible to estimate the additional expenditure that will arise from the expansion of GRHs.

### ***Risk Management Authority***

171. The expansion of the power to impose OLRs to those presiding over cases in the Sexual Offences Court will place additional costs on the Risk Management Authority (RMA), the non-departmental public body with responsibility for administering and overseeing the standard setting, accreditation and approval processes that support OLRs. The power to impose an OLR is currently restricted to those presiding over cases in the High Court, for which senators and temporary judges undergo specific training on the imposition of OLRs and the risk criteria associated in doing so. The extension of this power to sheriffs principal and sheriffs who are appointed to preside over cases in the court as Judges in the Sexual Offences Court means that they will also be required to undergo this training, which will come with an associated cost for the RMA.

172. The number of sheriffs principal and sheriffs appointed to sit in the court is a decision for the Lord President. As such, it is not possible at this stage to assess how many sheriffs principal or sheriffs will be required to undergo this training and therefore the specific costs to the RMA arising from this. As an indicative cost, the RMA has estimated that it will cost in the region of £6,000 to run an individual training course that can provide training for up to 10 Judges in the Sexual Offences Court.

### ***Individuals and businesses***

173. Provisions in the Bill requiring legal professionals to undergo trauma-informed training before being granted rights of audience to appear in the Court will result in costs to advocates, solicitor advocates and solicitors. In order to secure rights of audience, those wishing to appear in the Court will be required to complete a training course approved by the Lord Justice General.

174. Currently the Law Society of Scotland offers trauma-informed training certification course for individual solicitors and solicitor advocates at a cost of £560 + VAT, for which participants receive 20 hours of Continuous Professional Development (CPD) time towards annual requirements. While this provides a guideline for potential costs, the specifics of the training developed in response to the provisions will ultimately be for the Lord Justice General to determine. It should also be noted that there is no requirement on solicitors or advocates to undergo trauma-informed training unless they wish to appear in cases in the Court.

## **PART 6 OF THE BILL (SECTIONS 63 TO 66) – SEXUAL OFFENCE CASES: FURTHER REFORM**

### **Anonymity for victims**

175. The Bill creates a new automatic right to anonymity for victims of sexual offences, offences which have a significant sexual element, and a limited number of offences the nature of which share the same underlying concerns regarding privacy, dignity, trauma and the vulnerability of complainers (human trafficking, modern slavery, female genital mutilation and virginity testing).

176. The Bill makes provision for the start point for the right to anonymity to be from when the offence is committed and for the end point to be upon the death of the complainer.

177. The Bill also provides for the circumstances in which anonymity may be set aside or waived and creates a judicial oversight role for the waiving of anonymity by a child where a third party wishes to publish information. This judicial oversight will serve a protective function, specifically where a third-party publisher, such as a newspaper or television programme, wishes to publish a child survivor's story in order to ensure the child has provided free and fully informed consent.

178. The Bill introduces a new offence of breach of anonymity, which relates to unauthorised disclosures in the public domain (i.e., not relating to private conversations or disclosures) and which carries a maximum sentence of two years' imprisonment and/or an unlimited fine. The Bill also makes provision for defences to this new offence.

### **Costs on the Scottish Administration**

#### ***Crown Office and Procurator Fiscal Service***

##### *Training*

179. Training and updated guidance for prosecutors will be required as part of implementation of the complainer anonymity reforms. These costs will be minimal with the necessary steps taken as part of the normal arrangements for training and guidance within COPFS that arise on an ongoing basis.

##### *Breach of anonymity*

180. The intention of the offence is to change behaviour to ensure anonymity is not breached in any case. It is expected there may be some limited costs in relation to the new criminal offence of breaching anonymity. In order to estimate the number of breaches which may occur, figures produced by the UK Government concerning the volume of offences against breach of anonymity under the law in England and Wales have been used. The following table records data for the years 2019-2022.

Table 15 – Number of defendants prosecuted, convicted and sentenced for an offence under section 5 of the Sexual Offences (Amendment) Act 1992, England and Wales<sup>37</sup>

	<b>Year ending June 2019</b>	<b>Year ending June 2020</b>	<b>Year ending June 2021</b>	<b>Year ending June 2022</b>
Prosecuted	6	9	6	3
Convicted	5	9	6	3
Sentenced	5	9	6	3

181. As a result of the small numbers of proceedings for this offence in England and Wales over the past four years, which covers a significantly larger population size than Scotland, it is expected the numbers will be low. It may be that prosecutions for breach of anonymity rarely occur, if at all, year on year in Scotland. As such, specific estimates of the cost of the new offence of breaching anonymity under the Bill have not been provided.

182. For illustrative purposes however, the table below provides estimates of the average cost of criminal cases in different levels of court in Scotland should criminal proceedings be raised by COPFS for breach of the new offence. As the Bill provides that the offence of breaching anonymity is triable both under summary procedure and on indictment, costings have been laid out for both Sheriff summary and Sheriff solemn court cases.

Table 16 – Individual criminal proceedings case costs associated with breaches (per case)<sup>38</sup>

	<b>Sheriff solemn court case</b>	<b>Sheriff summary court case</b>
Cost to COPFS	£14,750	£1,142
Cost to SCTS	£2,582	£507
Cost to SLAB	£1,912	£712

<sup>37</sup> Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used. The figures provided relate to defendants for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

<sup>38</sup> The costs for COPFS have been provided by its Finance Department. The costs for SCTS and SLAB use the Costs of the Criminal Justice System in Scotland Dataset 2016-17 (available at: [Costs of the criminal justice system in Scotland dataset: 2016-17 \(published December 2019\) - gov.scot \(www.gov.scot/\)](https://www.gov.scot/publications/costs-of-the-criminal-justice-system-in-scotland-dataset-2016-17/published-december-2019/)) and adjusts for inflation to give the costs in 2022-23 prices, using HMT GDP Deflators (November 2022 / Autumn Statement edition, available at: <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp> ).

## ***Scottish Courts and Tribunals Service***

### *Training*

183. Introducing an automatic statutory right of anonymity for complainers of sexual (and other qualifying offences) will not, in itself, create any cost impacts for SCTS.

184. Training of the judiciary is the responsibility of the Judicial Institute for Scotland, which operates under the authority of the Lord President. As with any significant new legal reform, there may be a need for training for the judiciary. For example, to ensure readiness for implementation of the Domestic Abuse (Scotland) Act 2018, the Lord President committed to ensure all members of the judiciary receive training on the Act. As such, no specific cost estimates are provided as it will be for the Judicial Institute for Scotland in due course to assess whether there will be a need for any specific new training for the judiciary. That will be assessed as and when legislation is passed and plans for implementation are progressed.

### *Breach of anonymity*

185. The potential costs to SCTS associated with criminal court proceedings for the new offence of breach of anonymity is set out in Table 16. As stated above, based on data in England and Wales, it is expected that criminal proceedings in relation to the new offence of breaching anonymity will be extremely rare.

### *Waiver of anonymity*

186. The Bill enables adult complainers to unilaterally waive their right to anonymity either through self-publication or via a third-party publisher following written consent, without a requirement for the involvement of a court. There are, therefore, no direct cost implications for SCTS in this regard.

187. However, the Bill provides additional safeguards in respect of complainers who are children (those aged under 18) who wish to publicly share their experience of being the victim of a qualifying offence. Judicial oversight is required in respect of the waiving of anonymity by a child where a third party wishes to publish identifying information. This judicial oversight role seeks to serve a protective function, specifically where a third-party publisher, such as a newspaper or television programme, wishes to publish a child survivor's story. As set out in the Bill, a third-party publisher must apply to the Sheriff Court for permission to do so through summary application procedure in order for the court to be satisfied the child has provided free and informed consent to third party publication.

188. It is anticipated that minimal costs will be associated with this provision because it is expected that it will be used only very rarely. This is on the basis the Bill empowers adult complainers to unilaterally waive their anonymity either through self-publication or via a third-party publisher at age 18, and will therefore likely represent the preferred and most commonly used route, without the need for a court process. Alternatively, it remains open for a third-party publisher to tell a child survivor's story through anonymous publication, without the publisher (who is ineligible for legal aid) engaging the time and expense of a court process.

## **Costs on Local Authorities**

189. It is not anticipated that there will be any new costs for local authorities as a result of these provisions.

## **Costs on Other Bodies, Individuals and Businesses**

### ***Police Scotland***

190. It is not expected there will be any direct significant impact on Police Scotland arising from these provisions.

191. The anonymity measure in the Bill prohibits third parties from publishing identifying information about the victim of a qualifying offence in the absence of the consent of the victim, or in the case of children (deemed persons under 18), court approval.

192. While breach of the statutory right of anonymity provided for in the Bill is a criminal offence, monitoring adherence to restrictions upon the publication of identifying information in criminal cases where court orders are in place (breach of which is a criminal offence) is an existing part of Police Scotland's overall responsibilities. Similarly, there are existing legal restrictions on the publication of identifying information about children involved in criminal proceedings which the police monitor as part of their overall duties.

### ***Scottish Legal Aid Board***

#### ***Breach of anonymity***

193. The costs to SLAB associated with criminal court proceedings for the new offence of breach of anonymity is set out in Table 16. As stated above, based on data in England and Wales, it is expected that criminal proceedings (and therefore impact on the legal aid fund) in relation to the new offence of breaching anonymity will be very rare.

#### ***Waiver of anonymity***

194. Where a child complainer wishes to waive their anonymity through third party publication, for example through a television programme or newspaper, it is the policy intention to provide legal aid for the child complainer so a solicitor can represent their interests.

195. The average legal aid cost of a case proceeding by way of summary application is £671 inclusive of VAT, exclusive of any case specific outlays.

196. As set out above, it is not anticipated significant costs will be associated with this provision as a third-party publisher may simply publish a child survivor's story anonymously or at age 18, publication can take place without court oversight. As such, it is expected that such applications will be very rare.

### ***Individuals and businesses***

197. Minimal new training-related costs may fall to media/news outlets and any individual/body/business which engages in the publishing of information to the public domain (including on social media) in the area of sexual offences (and other qualifying offences) where complainers will enjoy an automatic legal right of anonymity. This includes potential publishers being live to the possibility of jigsaw identification. No costs are expected as the statutory right of anonymity being provided for by the Bill enshrines into law current practice and convention within the media against publication of identifying information. While the anonymity measures also apply to individuals, as set out above, criminal offences of breaching anonymity/reporting restrictions in England and Wales are rare and low volume.

### **Independent legal representation for complainers**

198. The Bill provides enabling powers to introduce a right to independent legal representation (ILR) for complainers in sexual offence cases where applications to lead sexual history or ‘bad character’ evidence are made by either the prosecution or defence for the accused. These are known as ‘section 275 applications’ as they are made under section 275 of the Criminal Procedure (Scotland) Act 1995.<sup>39</sup>

199. Through these provisions, it is intended that the right to ILR will improve the complainer’s experience in sexual offence trials, in particular their understanding and ability to provide their views and be heard in court in respect of an especially intrusive aspect of criminal procedure when applications are made to lead evidence in relation to sexual history or character evidence.

200. The Bill makes provision for the complainer to be informed (by COPFS) when a section 275 application is made in relation to them. The Bill makes provision for the complainer to have the automatic right to public-funded independent legal advice and representation in relation to the section 275 application. The Bill also makes provision to ensure the complainer’s ILR is provided with relevant information in order to fully advise the complainer about the application and is able to make representation to the court in respect of the complainer’s views on the application.

201. The Bill further makes provision for the complainer to appeal certain decisions in relation to a section 275 application, as well as provision to adjust timescales for submitting a section 275 application to provide additional time for the complainer to effectively implement their right to ILR.

### **Costs on the Scottish Administration**

#### ***Crown Office and Procurator Fiscal Service***

202. There will be resource costs arising from the COPFS having a duty to notify a complainer of any section 275 application. The specific costs that will arise will depend on a number of uncertain variables, including that the use of the provisions is demand-led. The costs arising will also depend on how COPFS operationalise this new requirement. Similarly, there will be resource costs associated with COPFS having a new duty to disclose specified information as detailed

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<sup>39</sup> [Criminal Procedure \(Scotland\) Act 1995 \(legislation.gov.uk\)](https://legislation.gov.uk)



within the Bill. This would also be the case should any redaction be required. As with the duty to notify, the specific costs that will arise will depend on a number of uncertain variables, including that the use of the provisions are demand-led, and will also depend on how COPFS operationalise this new requirement.

### ***Scottish Courts and Tribunals Service***

203. These provisions will have cost and resource implications for SCTS. These will include the costs associated with the proposed introduction of a requirement on the courts to consider applications for disclosure of evidence by the Crown to the complainer's legal representative. To date there is no reasonable comparator of the type of application in the current court process making quantification of costs particularly difficult.

204. It is also anticipated at this juncture that additional court time will be incurred to facilitate the making of - and the consideration of by the judiciary - representations from the complainer's legal representative via the hearing on the section 275 application. SCTS has advised that the additional time taken and the associated cost implications is extremely difficult to assess given the number of variables involved in such applications, including length, terms, number of accused, as well as the uncertainty of volume. A similar approach to costings for the disclosure applications is likely to apply with additional court time and reducing the number of procedural hearings that can proceed in a court day. Again, for the reasons narrated above estimated costings cannot be provided at this stage.

205. It is also expected that that court forms will require to be amended or new ones created to reflect the proposed procedures and associated changes. Potential changes may include: amended or new forms associated with confirmation of notification to the complainer; a notification form to the court/prosecutor of the legal representative's appointment; any notification form seeking disclosure from the prosecutor; any application for disclosure of evidence and associated intimation forms for the accused; any forms for completion by the legal representative. Current forms associated with section 275 applications and associated appeals will also require updating. The costs associated with this are likely to be minimal but cannot be quantified at present.

### ***Scottish Government***

206. There will be costs associated with communication and widening awareness of the Bill and its implication for complainers, but these are expected to be minimal as will mostly be provided online.

### **Costs on Local Authorities**

207. It is not anticipated that there will be any new costs for local authorities as a result of these provisions.

## **Costs on Other Bodies, Individuals and Businesses**

### ***Scottish Legal Aid Board***

208. The costs to SLAB of funding the required provisions are difficult to estimate as they will be demand-led and will increase considerably if this right were subsequently extended to other offences. There is also currently limited data held on section 275 applications.

209. However, data from a recent HM Inspectorate of Prosecution In Scotland report<sup>40</sup> indicates the number of applications submitted in solemn proceedings each year between 2018 and 2021 ranges from 243 to 349 (Table 17 refers). These figures do not include applications made in Sheriff Court summary cases so, consequently, the number of applications is likely to be higher than the historical average of the data provided in Table 17. It should also be noted that due to the wide range of work being carried out to address the backlog of cases, as well as the inclusion in the data from 2020 - when the number of jury trials were unusually low due to the impact of COVID-19 - it is likely that in coming years the numbers of solemn trials will be higher on average than during the period from 2018 to 22.

Table 17 – Number of Section 275 applications by court

	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>1 January 2021 – 30 June 2021</b>
<b>High Court</b>	286	311	227	139
<b>Sheriff Court (Solemn)</b>	31	38	16	20
<b>Total</b>	<b>317</b>	<b>349</b>	<b>243</b>	<b>159</b>

210. As a cost baseline, parallels have been made with existing public funded ILR for complainers in respect of applications to recover sensitive medical records in sexual offence cases.<sup>41</sup> Following engagement with the sector, it is suggested that the average costs for legal aid associated with ILR in respect of such applications ranges between £800 to £1,200. It is also recognised that applications relating to section 275 will most likely be more complicated than applications to recover sensitive medical records and, as a result, it is anticipated that the costs for ILR in relation to section 275 applications may be at the top end of the estimate or greater.

211. Based on data provided in Table 17 and using the lowest (243) and highest (349) number of applications made per year, along with the estimated costs discussed above, the annual costs incurred by SLAB for ILR could range from the lower end of the scale of between £194,400 and £279,200 (243\*£800 and 349\*£800). At the higher end of the scale estimated costs could range between £291,600 and £418,800 (243\*£1,200 and 349\*£1,200). This does not include any

<sup>40</sup> HM Inspectorate of Prosecution Report on COPFS practice in relation to Sections 274/275 of the Criminal Procedure (Scotland) Act 1995, Scottish Government, 19 October 2022. [2 Data on section 275 applications - Criminal Procedure \(Scotland\) Act 1995 - sections 274 and 275: inspection of COPFS practice - gov.scot \(www.gov.scot\)](#)

<sup>41</sup> Currently legal aid provision is available for complainers to oppose recovery of medical and sensitive records by way of applications for civil 'ABWOR' (subject to relevant tests). ABWOR is 'assistance by way of representation'. It is a form of advice and assistance funding that allows for a solicitor to represent a client at a hearing

potential costs in relation to ILR arising from section 275 applications made in Sheriff summary cases.

212. It is also further acknowledged that capacity within the legal sector is currently under significant pressure and these provisions are likely to add to that. There will also likely be costs with establishing and maintaining the operational delivery model for ILR, ongoing training and effective evaluation of the effectiveness of such a role. Future and ongoing costs will also need to be considered alongside wider financial developments relating to the provision of legal aid.

Table 18 – Summary of costs to SLAB (recurring, based on information in Table 17)

<b>Type of cost</b>	<b>Cost</b>
Legal aid for ILR	Lower end of scale – between £194,000 and £279,200  Higher end of scale – between £291,600 and £418,000  Costs relating to summary cases unknown at present due to data in relation to this not being currently available
<b>Totals</b>	<b>Minimum of between £194,000 and £418,000</b>

### **Rape trials pilot**

213. Provisions in the Bill give Scottish Ministers the necessary powers to bring forward secondary legislation to enable a pilot of single judge trials for cases of rape and attempted rape. The provisions do not specify the detailed case criteria for how such a pilot should operate. This will be subject to further consideration through secondary legislation that will be brought forward for Parliamentary scrutiny at a future date.

### **Costs on the Scottish Administration**

214. The main costs arising from these provisions will relate to any project costs to design, establish and monitor the pilot as well as costs arising from the need to gather data and have in place a robust evaluation framework which will include a requirement to gather baseline data before a pilot commences.

215. It has not been possible at this stage to estimate with any degree of certainty the project and evaluation costs arising from the pilot. The provisions within the Bill provide important flexibility and do not specify the detailed criteria for cases which will be included in the pilot nor how long the pilot will run for. Both those aspects are key in determining how many cases will require to be evaluated under the pilot. These matters will be the subject of cross-sector collaboration in order to inform the development of the secondary legislation that will follow. Furthermore, the detailed design of the methodology and operation of the pilot will influence the data-gathering requirement and the evaluation framework. This work is ongoing and, again, will inform the development of the secondary legislation that will be brought forward for Parliamentary scrutiny at a future date.

216. As a broad estimate, based on expenditure arising from similar evaluation exercises, the cost of the evaluation may be expected to be between £200,000 - £500,000 over the course of the pilot depending on the factors noted. Costs may also arise from the need to develop training for judges presiding over cases in the pilot, such as on the delivery of written reasons for verdicts. These costs will depend on how many judges are required to participate in the pilot. Further consideration of how best to support complainers and others involved in the pilot may also lead to costs. Again, these cannot be estimated at this stage given the variables - including design of the evaluation framework and number of cases included in the pilot – which will impact this.

217. The operation of the trials themselves under the pilot should not attract significant additional costs outwith the requirements for information gathering to facilitate assessment, evaluation and reporting. The mode of trial being tested by the pilot is one used in summary procedure and familiar to the Scottish criminal justice system. While secondary legislation will detail matters of procedure to facilitate the operation of single judge trials in solemn proceedings, it is not anticipated at this stage that any adjustment to procedure will have significant cost implications for those involved in trials. It is also worth noting that any costs occurring may be offset by savings arising from the absence of juries which therefore eliminates the need to pay juror expenses. Savings may also arise if trials without juries result in trials being shorter, thus freeing up court and other resources across the justice system to deal with other business.

#### **Costs on Local Authorities**

218. It is not anticipated that there will be any new costs for local authorities as a result of these provisions.

#### **Costs on Other Bodies, Individuals and Businesses**

219. It is not anticipated that there will be any new costs for other bodies, individuals and businesses as a result of these provisions.

## SUMMARY OF COSTS AND BENEFITS

### Tables showing costs identified in this Financial Memorandum

220. For a number of parts of the Bill, it has not been possible to estimate costs as these will be dependent on operational decisions taken after the legislation is agreed. This has been highlighted at the relevant section in the Financial Memorandum and summarised in the tables below. Where total costs are estimated, it should be noted that further costs stemming from these operational decisions are anticipated for a number of the provisions.

*Table 19 – Summary of costs relating to establishing a Victims and Witnesses Commissioner*

<b>Part 1 - Victims and Witnesses Commissioner for Scotland</b>				
<b>Category</b>	<b>Falling on</b>	<b>Nature of cost</b>	<b>One-off</b>	<b>Recurring annually</b>
<b>Scottish Administration</b>	Scottish Government	Set-up and running costs for first year	Up to £638,719	-
	Scottish Parliament	Running costs from year 2 onwards	-	Up to £615,149
<b>Local authorities</b>	No new costs anticipated		-	-
<b>Other bodies, individuals and businesses</b>	No new costs anticipated		-	-
<b>Total costs</b>			<b>Up to £628,719</b>	<b>Up to £615,149</b>

*Table 20 – Summary of costs relating to trauma-informed practice*

221. Significant work on training staff in trauma-informed practice is already underway across the justice sector, with justice agencies having endorsed NHS Education Scotland’s ‘Trauma Informed Justice – A Knowledge and Skills Framework for Working with Victims and Witnesses’, and the costs set out below should therefore be seen in the context of longer-term work already in train across the sector, rather than as only resulting from the provisions of the Bill.

*This document relates to the Victims, Witnesses, and Justice Reform (Scotland) Bill  
(SP Bill 26) as introduced in the Scottish Parliament on 25 April 2023*

<b>Part 2 - Trauma-informed practice</b>				
<b>Category</b>	<b>Falling on</b>	<b>Nature of cost</b>	<b>One-off</b>	<b>Recurring annually</b>
<b>Scottish Administration</b>	SCTS	<p>Training</p> <p><u>One-off:</u> development and staff time attending initial training</p> <p><u>Recurring:</u> staff time for refresher training and new starts attending initial training</p>	Minimum of £350,000 (depending on staff numbers)	Minimum of £62,500 (estimated as being 25% of initial costs)
		<p>Potential one-off costs relating to:</p> <ul style="list-style-type: none"> <li>• updating external and internal materials;</li> <li>• changes to court practice and procedures (for example, if the provisions lead to changes to court scheduling);</li> <li>• adaptations to the court estate that may be required to support a trauma-informed approach.</li> </ul>	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once the legislation is approved	-
	COPFS	Training and possible resourcing implications arising from changes to processes and procedures to make them more trauma-informed	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once the legislation is approved	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once the legislation is approved
	SPS	Training	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once	Costs arising from this are unknown at present as specific operational decisions in these areas will

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<b>Part 2 - Trauma-informed practice</b>				
<b>Category</b>	<b>Falling on</b>	<b>Nature of cost</b>	<b>One-off</b>	<b>Recurring annually</b>
			the legislation is approved	only be taken once the legislation is approved
<b>Local authorities</b>	No new costs anticipated		-	-
<b>Other bodies, individuals and businesses</b>	Police Scotland	Training – staff time for undertaking initial E-learning package	£1,000,000 minimum plus additional costs for specialist officers who require external training (cost per session is £1,415 for 90 students; exact costs will depend on number of officers who require this training)	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once the legislation is approved
	Parole Board for Scotland	Training – one-off costs being initial training for Board members, recurring being refresher training for Board members and annual staff training	£29,050	£11,183
<b>Total</b>			<b>Minimum of £1,379,050, with further costs dependant on operational decisions</b>	<b>Minimum of £73,683, with further costs dependant on operational decisions</b>

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**Table 21 – Summary of costs relating to special measures in civil cases**

<b>Part 3 - Special measures in civil cases to protect vulnerable witnesses and parties</b>				
<b>Category</b>	<b>Falling on</b>	<b>Nature of cost</b>	<b>One-off</b>	<b>Recurring annually</b>
<b>Scottish Administration</b>	Scottish Government	<u>One-off</u> : set-up costs for the register of solicitors	£230,000	Two cost estimates calculated:  1) Low-cost scenario - around £550,000 (based on running costs for a register that were estimated in the financial memo for the Children (Scotland) Act 2020)  2) Higher cost scenario – up to £1,000,000, (based on costs estimated for a register in England and Wales in relation to the Domestic Abuse Act 2021)
		<u>Recurring</u> : costs of operating the register of solicitors and providing legal representation		
		Public-facing information about special measures in civil cases	£11,750	-
	SCTS	Purchase of equipment (for example, TV links, screens)	£1,650,000	-
		Hearings to obtain information from databases if facts around criminal convictions/cases are disputed	-	£70 per hearing (such hearings are anticipated)



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<b>Part 3 - Special measures in civil cases to protect vulnerable witnesses and parties</b>				
<b>Category</b>	<b>Falling on</b>	<b>Nature of cost</b>	<b>One-off</b>	<b>Recurring annually</b>
				to be rare, so costs are likely to be minimal)
<b>Local authorities</b>	No new costs anticipated		-	-
<b>Other bodies, individuals and businesses</b>	SLAB	Travel and subsistence claims by supporters of parties who are receiving legal aid	-	£96,748
		Legal aid for hearings to obtain information from databases if facts around criminal convictions/cases are disputed	-	£150 per hearing per assisted person (such hearings are anticipated to be rare, so costs are likely to be minimal)
	Parties in cases who do not receive legal aid	Travel and subsistence claims by supporters of such parties	-	Costs to the individual party could be around £1,273 (the average value of SLAB current approvals in relation to special measures in civil cases), but it is not possible to estimate the total recurring cost at this time.
		Cost for parties who are not receiving legal aid for hearings to obtain information from databases if facts around criminal convictions/cases are disputed	-	£150 per hearing (such hearings are anticipated to be rare, so costs are likely to be minimal)

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<b>Part 3 - Special measures in civil cases to protect vulnerable witnesses and parties</b>				
<b>Category</b>	<b>Falling on</b>	<b>Nature of cost</b>	<b>One-off</b>	<b>Recurring annually</b>
<b>Total costs</b>			<b>£1,891,750</b>	<b>£646,748 to £1,096,748 plus minimal costs for hearings</b>

*Table 22 – Summary of costs related to criminal juries and verdicts*

<b>Part 4 – Criminal juries and verdicts</b>
Increasing the majority required for conviction and moving to a two-verdict system are not expected to have financial impacts, other than some very minor costs for COPFS and SCTS associated with updating written materials and IT. There may be indirect costs if the reforms lead to changes, for example, increase/decrease in conviction rates, but this is something which cannot be modelled with any degree of certainty. There may be some minor costs in relation to updating materials and processes for SCTS and COPFS in relation to reducing jury size, as well as some potential savings for SCTS and business/individuals, which are outlined in the Table 27.

*Table 23 – Summary of costs related to the Sexual Offences Court*

<b>Part 5 - Sexual offences court</b>				
<b>Category</b>	<b>Falling on</b>	<b>Nature of cost</b>	<b>One-off</b>	<b>Recurring annually</b>
<b>Scottish Administration</b>	SCTS	<p><u>One-off</u>: staffing, training, project team to create the court, IT systems, adaptations to court buildings and to the jury citation process</p> <p><u>Recurring</u>: training and staffing (pay supplements relating to changes to staff roles and responsibilities, appointment of principal clerk and uniform costs)</p>	£1,444,000	£492,000

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<b>Part 5 - Sexual offences court</b>				
<b>Category</b>	<b>Falling on</b>	<b>Nature of cost</b>	<b>One-off</b>	<b>Recurring annually</b>
	COPFS	Training, changes to existing processes and practices in the preparation and presentation of cases	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once the legislation is approved	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once the legislation is approved
<b>Local authorities</b>	No new costs anticipated		-	-
<b>Other bodies, individuals and businesses</b>	SLAB	Changes to ‘automatic sanction’ for counsel – staffing and volume of applications; additional Ground Rules Hearings	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once the legislation is approved	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once the legislation is approved
	Risk Management Authority	Training in relation to OLRs for sheriffs and sheriffs principal	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once the legislation is approved	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once the legislation is approved
	Advocates, solicitors and solicitors advocate	Training – completion of trauma-informed training required for rights of audience in the new court	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once the legislation is approved	Costs arising from this are unknown at present as specific operational decisions in these areas will only be taken once the legislation is approved

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<b>Part 5 - Sexual offences court</b>				
<b>Category</b>	<b>Falling on</b>	<b>Nature of cost</b>	<b>One-off</b>	<b>Recurring annually</b>
<b>Total costs</b>			<b>Minimum of £1,444,000, with further dependant on operational decisions</b>	<b>Minimum of £492,000, with further costs dependant on operational decisions</b>

*Table 24 – Summary of costs related to anonymity for victims*

<b>Part 6 – Sexual offence cases: further provisions – Anonymity for victims</b>				
<b>Category</b>	<b>Falling on</b>	<b>Nature of cost</b>	<b>One-off</b>	<b>Recurring annually</b>
<b>Scottish Administration</b>	COPFS	Training	Minimal costs – part of the normal arrangements for training and guidance that arise on an ongoing basis	-
		Prosecution of new breach of anonymity offence	-	Minimal costs – dependant on number of cases but numbers anticipated to be low
	SCTS	Cases relating to new breach of anonymity offence	-	Minimal costs – dependant on number of cases but numbers anticipated to be low
		Judicial oversight of cases where a child wishes to waive their right to anonymity	-	Minimal costs – provision expected to be used very rarely

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<b>Part 6 – Sexual offence cases: further provisions – Anonymity for victims</b>				
<b>Category</b>	<b>Falling on</b>	<b>Nature of cost</b>	<b>One-off</b>	<b>Recurring annually</b>
<b>Local authorities</b>	No new costs anticipated		-	-
<b>Other bodies, individuals and businesses</b>	Police Scotland	Investigation of new breach of anonymity offence	-	No new costs identified as Police Scotland already have responsibility to investigate breaches of anonymity criminal cases where court orders are in place
	SLAB	Legal aid in cases relating to new breach of anonymity offence	-	Minimal costs – dependant on number of cases but numbers anticipated to be low
		Legal aid in cases where a child wishes to waive their right to anonymity	-	Minimal costs – provision expected to be used very rarely
	Businesses and individuals	For businesses and individuals that publish information in the public domain relating to relevant offences (for example, news outlets), there will need to be a general awareness of the legislation and processes to ensure there are no breaches	-	No costs are expected as the Bill puts current practice and convention into law
<b>Total costs</b>			<b>Minimal costs anticipated</b>	<b>Minimal costs anticipated</b>

*This document relates to the Victims, Witnesses, and Justice Reform (Scotland) Bill  
(SP Bill 26) as introduced in the Scottish Parliament on 25 April 2023*

**Table 25 – Summary of costs relating to independent legal representation**

<b>Part 6 – Sexual offence cases: further provisions – Independent legal representation</b>				
<b>Category</b>	<b>Falling on</b>	<b>Nature of cost</b>	<b>One-off</b>	<b>Recurring annually</b>
<b>Scottish Administration</b>	SCTS	Additional court time and hearings, updating materials and processes	-	Costs that will arise will depend on a number of uncertain variables, including that the use of the provisions are demand led
	COPFS	Resource costs relating to the duties to notify complainers about applications and about disclosure.	-	Costs that will arise will depend on a number of uncertain variables, including that the use of the provisions are demand-led, and will also depend on how COPFS operationalise this new requirement
	Scottish Government	Costs associated with communication and widening awareness of the Bill and its implication for victims	Minimal costs anticipated	-
<b>Local authorities</b>	No new costs anticipated			
<b>Other bodies, individuals and businesses</b>	SLAB	Legal aid – solemn cases		Between £279,200 and £418,800  Costs relating to summary cases unknown at present due to data in relation to this not being currently available
<b>Total costs</b>			<b>Minimal costs anticipated</b>	<b>Minimum of between £279,000 and £418,000,</b>

	<b>with further costs dependant on operational decisions</b>
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**Table 26 – Summary of costs related to the pilot of single judge trials**

<b>Part 6 – Sexual offence cases: further provisions – Pilot of single judge trials for rape cases</b>
<p>The costs associated with conducting a pilot of single judge rape trials will be driven by specific design features of the pilot such as its length and the criteria for the inclusion of cases within the scope of the pilot which taken together will determine the number of cases within the pilot. The features of the pilot will be developed for inclusion in secondary legislation alongside which an overview of projected costs associated with the proposed model will be carried out. There may be minimal costs to the legal aid budget, which will be considered as part of the overview of projected costs to accompany the secondary legislation necessary to enable the pilot.</p> <p>As a broad estimate, based on expenditure arising from similar evaluation exercises, the cost of the evaluation may be expected to be between £200,000 - £500,000.</p>

**Tables showing benefits identified in this Financial Memorandum**

**Table 27 – Summary of savings relating to criminal juries and verdicts**

<b>Part 4 – Criminal juries and verdicts</b>				
<b>Category</b>	<b>Benefit to</b>	<b>Nature of benefit</b>	<b>One-off</b>	<b>Recurring annually</b>
<b>Scottish Administration</b>	SCTS	Cost of allowances claimed by jurors due to reduction in jury size	-	£749,000
<b>Other bodies, individuals and businesses</b>	Individuals and businesses	Reducing the amount of time spent on jury duty by 20% would free up approximately 16,000 days per year for citizens	-	This will vary from individual to individual and from business to business
<b>Total</b>			-	<b>£749,000</b>

*This document relates to the Victims, Witnesses, and Justice Reform (Scotland) Bill  
(SP Bill 26) as introduced in the Scottish Parliament on 25 April 2023*

# **VICTIMS, WITNESSES, AND JUSTICE REFORM (SCOTLAND) BILL**

## **FINANCIAL MEMORANDUM**

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