

CRIMINAL JUSTICE (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

SUPPLEMENTARY FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this Supplementary Financial Memorandum is published to accompany the Criminal Justice (Scotland) Bill (introduced in the Scottish Parliament on 20 June 2013) as amended at Stage 2.

2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.

3. This Supplementary Financial Memorandum addresses the financial impact of Stage 2 amendments. The majority of the amendments do not substantially alter any of the costs in the original Financial Memorandum. This document, therefore, only addresses those Stage 2 amendments with anticipated or potential cost implications.

4. Four areas have been identified where there are expected to be additional costs arising from stage 2 amendments. These are as follows:

- Search of person not in police custody ("stop and search") (paras 6 – 11)
- Keeping person not officially accused in police custody (paras 12 – 22)
- Code of practice about investigative functions (paras 23 – 35)
- Detention of person with responsibility for a child (paras 36 – 51).

5. In addition, two areas have been identified where it is anticipated that costs outlined in the original Financial Memorandum will no longer be incurred as a consequence of stage 2 amendments. These are as follows:

- Investigative liberation – release on conditions (paras 52 – 54)
- Corroboration (paras 55 – 62).

STAGE 2 AMENDMENTS WHICH WILL RESULT IN ADDITIONAL COSTS

Search of person not in police custody

6. A number of amendments agreed by the Justice Committee at stage 2 introduced new provisions into the Bill about the search of a person who is not in police custody at the time of the search (sometimes known as the “stop and search” provisions).

7. The provisions put, on the face of legislation, a limitation on the power of police officers to search persons who are not in police custody.

8. They also require the Scottish Ministers to issue a code of practice about the carrying out of searches of such people. A draft of the code must be the subject of public consultation, and has to be reviewed at intervals stipulated by the legislation.

9. A draft code of practice has already been prepared by the independent advisory group on “stop and search”. But there will be additional costs to the Scottish Government associated with public consultation on the terms of the code. The cost of this will vary depending on the number and length of responses received to the consultation, and whether there is ultimately thought to be a need to engage external analysts to consider the responses. Drawing on previous experience of similar consultations, the costs are estimated as being between **£0 – 12,000**.

10. These provisions will also result in costs for the SPA related to the training of police officers. As well as the terms of the code once it has been finalised, the legislation contains an important clarification of the limits of police powers in this area. The circumstances in which officers search individuals, particularly those not in police custody, is a significant operational matter, and an issue of considerable public interest.

11. That being so, Police Scotland’s assessment is that all officers up to and including the rank of inspector will require one full day’s training. The cost of this is **£3,852,637**. However, this cost evaluates the time of police officers, and the intention is to provide this training over a period of time to ensure that the delivery of operational police functions is not impaired, and that there will be no need to backfill posts during the training. The cost will therefore be met from within existing resources. And it will not be a recurring cost, as the training of new recruits will be updated to cover the changes.

Table 1: Summary of additional costs arising from amendments in respect of searches of persons not in police custody

	Costs to be met from within existing resources	Additional costs	
		Lower estimate	Higher estimate
SPA – training requirements	£3,852,637	-	-
Scottish Government – public consultation	-	£0	£12,000
Totals	£3,852,637	£0	£12,000

Keeping person not officially accused in custody

12. There are two amendments in this area which have an impact on the Financial Memorandum, and will result in increased costs for the Scottish Police Authority (SPA).

13. Firstly, the Bill as introduced provided that, where a person has not been officially accused of an offence but is in police custody, authorisation to keep the person in custody may be given by a police constable of any rank who has not been involved in the relevant investigation (subsection 7(3)). An amendment agreed by the Justice Committee at stage 2 altered the position so that authorisation to keep the person in custody can only be given by an officer of the rank of sergeant or above.

14. Police Scotland based the estimates in the Financial Memorandum on figures from the financial year 2011/12. During that period there were 32,400 people processed at a custody facility after detention under section 14 of the Criminal Procedure (Scotland) Act 1995. 91% of those people had their detention authorised by a sergeant at a sergeant-led custody facility. The remaining 9% - 2880 people - were authorised by a constable at a constable-led custody facility.

15. Taking these estimates as a starting point, the effect of the amendment is that in the region of 2880 additional authorisations will require to be made by a sergeant or above, instead of by a constable as before. However, these authorisations may be carried out remotely by telephone, so there will not be a need to provide additional sergeants at every constable-led facility. Each authorisation will vary in time depending on the complexity of the case, and for the purposes of estimation it has been assumed that the process will fall into a range between 10 and 20 minutes.

16. The costs of authorisation by a constable are as follows:

- 2,880 arrest authorisations by constable taking 10 minutes, at £22.76 per hour = £10,925
- 2,880 arrest authorisations by constable taking 20 minutes, at £22.76 per hour = £21,849.

17. And the costs of having these authorisations carried out by a sergeant are as follows:

- 2,880 additional arrest authorisations by sergeant taking 10 minutes, at £26.97 an hour = £12,946
- 2,880 additional arrest authorisations by sergeant taking 20 minutes, at £26.97 per hour = £25,891.

18. This provides a cost range between **£2021** (for ten-minute authorisations) and **£4042** (for twenty-minute authorisations) for the additional authorisations to be carried out by an officer of the rank of sergeant, this being the difference between the present cost and the cost under this provision. This cost will be met from within existing resources.

19. Secondly, the Bill as introduced provided that a person who has not been officially accused of an offence could be held in police custody for a maximum of twelve hours without

being charged. Amendments agreed by the Justice Committee at stage 2 provide, in section 12A, that the period of twelve hours can be extended by a further twelve hours if authorised by an officer of the rank of inspector or above; and that, where someone is in that position, there should be a review, no more than six hours after the start of the extended period, of whether the suspect requires to be kept in custody.

20. The amendment which gives an inspector the power to extend a period of detention by a further twelve hours reinstates current procedure and, therefore, will not result in additional costs. However, the amendment which requires a review of the extended period after no more than six hours is new, and has some costs associated with it.

21. Figures available to Police Scotland suggest that around 129 suspects per year have their detention extended past the 12 hour mark. It is unlikely that all of these suspects will be kept in custody for 18 hours or more, so the following calculations represent an upper limit on possible costs, as it may be that not all of these suspects will require a review. However, if each of these suspects were to require their detention to be reviewed, by an inspector, after 18 hours in custody, assuming that each review will take between 10 and 30 minutes, this gives a potential range of costs as follows:

- 129 additional extension authorisations by inspector taking 10 minutes, at £33.86 an hour = £728
- 129 additional extension authorisations by inspector taking 30 minutes, at £33.86 per hour = £2,183.

22. This provides a cost range between **£728** and **£2,183** *per annum*. This cost will be met from within existing resources.

Table 2: Summary of additional costs of amendments in respect of keeping a person not officially accused in police custody

	Lower estimate	Higher estimate
Authorisation to keep person in custody from sergeant or above (annually)	£2021	£4042
Authorisation to keep person in custody past eighteen hours (annually)	£728	£2183
Total (to be met from within existing resources)	£2749	£6225

Code of practice about investigative functions

23. An amendment agreed by the Justice Committee at stage 2 introduced a new section 52A into the Bill. This provision requires the Lord Advocate to issue a code of practice on the questioning, and recording of questioning, of persons suspected of committing an offence; and the conduct of identification procedures involving such persons. In the course of drafting and issuing the code the Lord Advocate is obliged to consult publicly on a draft of the code, must thereafter keep it under review, and may revise it.

24. This provision has financial implications for the Crown Office and Procurator Fiscal Service (COPFS) and for the SPA. The obligation to issue the code rests on the Lord Advocate, who will be assisted in that by staff from within COPFS. In assessing the likely costs, COPFS has had regard to the fact that a considerable amount of work will be involved. There are extant Lord Advocate's Guidelines on identification procedures, but these were issued in 2007 and have not been revised since. There are presently no guidelines on interviewing.

25. The code also needs to be drafted with care, as a failure to comply with its terms could have an effect on the admissibility or value, in subsequent court proceedings, of any evidence obtained by police officers.

26. Taking that into account, COPFS's estimate is that preparation of the code will take approximately 12 months to complete. Two members of COPFS staff will be required on a permanent basis: one principal procurator fiscal depute, and one member of administrative staff. The costs are £82,333 and £23,124 respectively, including National Insurance and pension contributions: a total of **£105,457**.

27. COPFS may be able to achieve this by transferring staff from other duties, and meeting the cost from within existing resources. However, COPFS cannot rule out the possibility that, depending on operational requirements when the code is being prepared, the posts vacated will need to be backfilled, and that additional recruitment would then be required.

28. COPFS anticipates that, to assist in preparation of the code, it will need the practical expertise of an experienced police officer to advise on current practices, and to provide input on proposals arising from public consultation and discussion with COPFS. The officer will also be able to liaise with Police Scotland and utilise contacts with other police forces for comparative purposes. COPFS therefore considers that it will require a seconded officer from Police Scotland at either Inspector or Chief Inspector rank, with costs, including National Insurance and pension contributions, estimated at **£71,505** for an Inspector or **£75,970** for a Chief Inspector.

29. COPFS will also require to consult publicly on the terms of the code. The cost of this will depend on a number of factors which at this stage are not known: the length of the code, the level of detail thought necessary in any consultation document, the number of responses to the consultation, and whether external analysts require to be engaged to consider the responses received. The cost of consultation is estimated as being in the range **£0-12,000**.

30. The total cost to COPFS is therefore estimated as being **between £176,962 and £193,427**.

31. There may also be a training cost for the SPA following publication of the code. This will depend on the contents of the code, which are entirely within the discretion of the Lord Advocate.

32. If the code requires no change to current operational practices, no or minimal training will be required. At the other end of the scale, if the code requires that all operational police officers be trained to the required standard to carry out formal investigative interviews – a level

of training presently restricted to specialist roles including the CID – the potential cost becomes more significant.

33. In that event, Police Scotland estimates that around 12,900 officers, up to and including the rank of sergeant, would be required to complete the national five day investigative interview training course at a cost of £10,575,298. This would take in excess of one year to deliver following publication of the code.

34. However, this cost does not arise as a direct result of the Bill; it *may* arise after the code has been issued, and the extent to which training is required will of course depend on the terms of the code. The figure provided should therefore be regarded as being at the upper end of a range of possibilities following publication of the code; assessment of what – if anything – will require to change in police practice; and the consequent training requirements, if any.

35. In addition, this cost evaluates the time of police officers, and the intention is to provide this training over a period of time to ensure that the delivery of operational police functions is not impaired, and that there will be no need to backfill posts during the training. The cost will therefore be met from within existing resources.

Table 3a: Summary of additional costs arising from amendments in respect of the code of practice of investigative functions

	Lower estimate	Higher estimate
COPFS – internal staff redeployment	£105,457	£105,457
COPFS – costs of seconded police officer	£71,505	£75,970
COPFS – public consultation	£0	£12,000
Total costs	£176,962	£193,427

Table 3b: Summary of additional costs arising from police training requirements as a consequence of the code of practice of investigative functions

	Year 1		Year 2		Total (to be met from within existing resources)	
	Lower estimate	Higher estimate	Lower estimate	Higher estimate	Lower estimate	Higher estimate
SPA – costs of training officers on code	£0	£5,287,649	£0	£5,287,649	£0	£10,575,298

Detention of person with responsibility for a child

36. An amendment agreed by the Justice Committee at stage 2 introduced a new section 82A into the Bill. This provision places an obligation on the court to ensure that a child and family impact assessment (“CFIA”) is carried out when a person who has responsibility for a child has been remanded in custody awaiting trial; has been convicted of an offence punishable by

imprisonment and has been remanded in custody pending sentence; or has been sentenced to a term of imprisonment or other detention.

37. The purpose of the CFIA is to determine the likely impact of the imprisonment on the wellbeing of the child, and to identify any support and assistance which will be necessary to meet the child's wellbeing needs.

38. The amendment does not specify who is to carry out the CFIA; it gives power to the Scottish Ministers to make provision, by regulations, to require persons to undertake them

39. As the court is required to "ensure" that the CFIA is carried out, in terms of the provision, the burden of requesting and administering the CFIA will fall on the Scottish Courts and Tribunals Service (SCTS). For SCTS, it is considered that the requirement for the court to ensure that a CFIA is carried out in these circumstances will have significant cost implications.

40. SCTS's estimate of costs is based on the following assumptions. There are, annually, an estimated 23,000 remands in custody, and 15,000 sentences of imprisonment or other detention. Office of National Statistics figures show that there is an average of 1.7 children per family¹.

41. It is assumed that an assessment will be requested for each dependent child for whom the individual has responsibility. This is on the basis that the effect on each child will differ and some individuals will have responsibility for multiple children, who may live at different addresses.

42. It is also assumed that an assessment will be required for each period of remand or imprisonment/detention, given the wording of the provision.

43. This gives a total of 64,600 requests per year (23000 + 15000, multiplied by 1.7).

44. It is unlikely to be known by the court, particularly at the point of remand awaiting trial/sentence, whether a person has responsibility for a dependent child. This may be contained in a Criminal Justice Social Work Report. However, these are not produced for periods of remand and are not always required, or requested, pre-sentence.

45. Accordingly, it has been estimated that an average additional two minutes of court time will be required per case, in order for the court to obtain details of whether the individual has responsibility for a child, and to obtain any required details (e.g. the name and address of the child or children).

46. SCTS estimates the costs of this provision, therefore, as being as follows:

- Judicial costs: £390,830
- SCTS staff cost in court, for one clerk of court and one court officer: £118,864

¹ <http://www.ons.gov.uk/ons/rel/family-demography/family-size/2012/family-size-rpt.html>

- SCTS staff cost to prepare and send request for assessment:£160,208
- SCTS postage costs. Given the sensitive nature of the information being conveyed, and the fact that SCTS does not know at this stage who will be responsible for the preparation of the assessments, and may not have a secure email link with them, SCTS has estimated this cost on the basis of first class recorded delivery at £1.73 per item: £111,758.

47. This gives an annual cost of **£781,660**.

48. In addition, the Bill provision requires the court to “ensure” that an assessment is carried out. Simply requesting the assessment does not necessarily meet this requirement. It is expected that SCTS would need to receive some form of confirmation that the assessment has been completed. Assuming that no judicial involvement is required, SCTS expects that to administer receipt of such notifications would involve more staff time: to receive confirmation, locate court papers, and update the IT system. This cost is estimated at **£160,208**.

49. Finally, SCTS has indicated that, as this is a novel procedure, an update to its IT systems would be required. The cost of this is estimated as being in the region of £10,000.

50. This gives a total financial cost to SCTS of around **£941,868** per annum, with an additional one-off cost of **£10,000** for IT. This represents a significant cost for SCTS, and its position is that this could **not** be met from within existing resources.

51. It should be noted that the provision contains no requirement for the judiciary to consider the terms of a CFIA once prepared, so no costs have been estimated in that regard. And if the court, in some cases, requires to obtain detailed and sensitive personal information about the children of the accused, necessitating the closing of the court, the given estimate of the amount of court time required for each case would, in all likelihood, be conservative.

Table 4a: Summary of additional annual costs of amendments in respect of courts requiring the preparation of a child and family impact assessment

Judicial costs	£390,830
SCTS staff in court costs	£118,864
SCTS staff out of court costs, to request assessments	£160,208
SCTS postage costs	£111,758
SCTS staff costs, ensuring report has been prepared	£160,208
Total annual costs	£941,868

Table 4b: Summary of additional one-off costs of amendments in respect of courts requiring the preparation of a child and family impact assessment

SCTS costs to upgrade IT systems	£10,000
Total one-off costs	£10,000

STAGE 2 AMENDMENTS WHICH WILL RESULT IN ANTICIPATED COSTS NOT BEING INCURRED

Investigative liberation – release on conditions

52. The Bill as introduced requires that, where a suspect is released on investigative liberation, a police officer of the rank of inspector or above may impose such conditions as s/he considers necessary and proportionate for the purpose of ensuring the proper conduct of the investigation. An amendment agreed by the Justice Committee at stage 2 provides that an officer of the rank of sergeant or above can impose these conditions.

53. The Financial Memorandum estimated the costs of the provision in the Bill as introduced as £27,427 annually. The basis of this estimate was that 1620 suspects would be liberated with conditions requiring the authorisation of an inspector, taking an average of 30 minutes, per case, at a cost of £33.86 per hour.

54. Taking, as the starting point, the same estimate of the number of suspects to whom this applies, and the average length of time to consider each case, and the cost of a sergeant's time as £26.97 per hour, this gives a new cost of £21,847, equating to a saving of £5,580 per annum. The cost of this provision in the Bill as introduced was categorised as an "opportunity cost", to be met from within existing resources, and this represents a reduction in expected costs.

Table 5: summary of costs not incurred arising from amendments in respect of suspects being released on investigative liberation with conditions

SPA – annual cost not incurred	£5,580
Total costs not incurred	£5,580

Corroboration

55. The Bill, as introduced, proposed the abolition of the general requirement for corroboration in criminal cases. Amendments agreed by the Justice Committee removed these provisions from the Bill.

56. The Financial Memorandum anticipated that the Bill's provisions would result in increases in the number of cases reported by the police to COPFS, and in the number of cases prosecuted by COPFS, with potential cost implications for SPA, COPFS, the Scottish Legal Aid Board (SLAB), SCTS, local authorities, and the Scottish Prison Service (SPS).

57. It was anticipated that most of these costs would be absorbed as part of general staff workloads, and could be met from within the budget and existing resources of the relevant organisations, by measures such as full use of existing resources, prioritisation of functions, and increased operational efficiency. These were referred to in the Financial Memorandum as "opportunity costs".

58. However, for some of the costs a specific need for additional staff or resources had been identified. These were referred to in the Financial Memorandum as "financial costs". These

figures were based on estimates provided by Police Scotland and COPFS, suggesting that there were likely to be increases in the number of cases reported by the police to COPFS, and in the number of cases prosecuted by COPFS.

Table 6a: costs of the abolition of the corroboration requirement, as given in the Financial Memorandum

	2015/16	2016/17	2017/18	2018/19
Opportunity costs (£ '000)	14,974	22,724	26,774	30,874
Financial costs (£ '000)	4,032	4,032	4,032	4,032

59. The anticipated costs of £4,032,000 were to be incurred by SPA and SLAB.

60. Police Scotland estimated an annual cost of £132,000 per annum, in respect of overtime costs for police officers being required to attend court as witnesses. This assumed a 3.03% rise in court overtime payments.

61. SLAB estimated an annual cost of £3,900,000, following the expected increase in prosecutions at all court levels. This relied on a best estimate of an additional 7.6% prosecutions at solemn level, split between High Court and sheriff and jury courts; and an additional 2.5% prosecutions at summary level, split between sheriff courts and JP courts.

62. With the removal of these provisions from the Bill, these costs will no longer be incurred.

Table 6b and 6c: summary of costs, as provided in the Financial Memorandum, which will not be incurred as a consequence of amendments in respect of the abolition of the corroboration requirement

	Reduction in expected costs identified in Financial Memorandum as being met from within existing resources			
	2015/16	2016/17	2017/18	2018/19
SPA	£3,965,000	£3,965,000	£3,965,000	£3,965,000
COPFS	£3,250,000*	£3,250,000*	£3,250,000*	£3,250,000*
SLAB	£0	£0	£0	£0
SCTS	£2,500,000*	£2,500,000*	£2,500,000*	£2,500,000*
SPS	£4,100,000*	£11,850,000*	£15,900,000*	£20,000,000*
Local authorities	£1,160,000*	£1,160,000*	£1,160,000*	£1,160,000*
Total	£14,975,000	£22,725,000	£26,775,000	£30,875,000

Reduction in expected costs identified in Financial Memorandum as requiring additional resources (annual)	
SPA	£132,000
SLAB	£3,900,000*
Total	£4,032,000

*best estimate from given range

SUMMARY

Table 7a: summary of additional annual financial costs, and costs not incurred, arising as a result of stage 2 amendments

	SCTS	SLAB	SPA
Child and family impact assessment	£941,868		
Corroboration		(£3,900,000)	(£132,000)
Totals per organisation	£941,868	(£3,900,000)	(£132,000)

Table 7b: summary of additional one-off costs arising as a result of stage 2 amendments

	SCTS	COPFS	SG
Child and family impact assessment	£10,000		
Code of practice about investigative functions		£176,962 - £193,427.	
“Stop and search”			£12,000
Totals per organisation	£10,000	£176,962 - £193,427.	£12,000

Table 7c: summary of additional financial costs, and costs not incurred, arising as a result of stage 2 amendments, on costs identified in the Financial Memorandum as being met from within existing resources

		2015/16	2016/17	2017/18	2018/19
SPA	Keeping person in custody	£2,749 - £6,225	£2,749 - £6,225	£2,749 - £6,225	£2,749 - £6,225
	Code of practice on investigative functions	£0 - £5,287,649	£0 - £5,287,649		
	“Stop and search”	£3,852,637			
	Corroboration	(£3,965,000)	(£3,965,000)	(£3,965,000)	(£3,965,000)
	Investigative liberation	(£5,580)	(£5,580)	(£5,580)	(£5,580)
	Total for SPA	£5,175,931 – (£115,194)	£1,323,294 - (£3,967,831)	(£3,964,355) – (£3,967,831)	(£3,964,355) – (£3,967,831)

This document relates to the Criminal Justice (Scotland) Bill as amended at Stage 2 (SP Bill 35A)

COPFS	Corroboration	(£3,250,000)	(£3,250,000)	(£3,250,000)	(£3,250,000)
SCTS	Corroboration	(£2,500,000)	(£2,500,000)	(£2,500,000)	(£2,500,000)
SPS	Corroboration	(£4,100,000)	(£11,850,000)	(£15,900,000)	(£20,000,000)
Local authorities	Corroboration	(£1,160,000)	(£1,160,000)	(£1,160,000)	(£1,160,000)
Total cost per year		(£5,834,069) — (£11,125,194)	(£17,436,706) — (£22,727,831)	(£26,774,355) — (£26,777,831)	(£30,874,355) — (£30,877,831)

This document relates to the Criminal Justice (Scotland) Bill as amended at Stage 2 (SP Bill 35A)

CRIMINAL JUSTICE (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

SUPPLEMENTARY FINANCIAL MEMORANDUM

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