

This document relates to the Coronavirus (Scotland) Bill (SP Bill 66) as introduced in the Scottish Parliament on 31 March 2020

Coronavirus (Scotland) Bill

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Coronavirus (Scotland) Bill, introduced in the Scottish Parliament on 31 March 2020.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 66-EN);
- a Policy Memorandum (SP Bill 66-PM);
- Statements on Legislative Competence by the Presiding Officer and the Scottish Government (SP Bill 66-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.

Policy objectives of the bill

4. The purpose of the Coronavirus (Scotland) Bill ("the Bill") is to respond to the emergency situation caused by the Covid-19 pandemic. The Bill complements and supplements the Coronavirus Act 2020 ("the 2020 Act"), passed by the UK Parliament on 25 March 2020, and which the Scottish Parliament gave its consent to on 24 March 2020.

5. The coronavirus outbreak is a severe and sustained threat to human life in Scotland. The Scottish Government is committed to taking all steps necessary to address that threat. A severe pandemic could infect a large proportion of the population, and the public health measures required to control and limit the spread of the outbreak will require a significant

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adjustment to the lives of those living in Scotland, to business in Scotland, and to the way public services are delivered and regulated.

6. Current public health guidance requires business and public authorities to operate very differently to the way they have done by implementing, for example, social distancing policies, or requiring their workforce to work from home, where possible. In addition the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (S.S.I. 2020/103) (“the 2020 Regulations”) have required the closure of business selling food or drink for consumption on the premises, and of a wide range of other business set out in the regulations to protect against risks to public health. The 2020 Regulations also prohibit anyone from leaving the place where they live without reasonable excuse and ban public gatherings of more than two people.

7. Public health guidance is likely to require some adjustment to normal life for some time, as the effort to limit and control the coronavirus outbreak continues. The requirements and restrictions in the 2020 Regulations will continue until they are terminated by the Scottish Ministers by direction, or until they expire under regulation 11 of the 2020 Regulations.

8. The Scottish Government considers that in order for essential public services to continue to be able to discharge their functions in the way they were intended to, some temporary changes need to be made to the way they operate and the way that they are regulated. In addition, further support and flexibility for business, and for those using public services, is necessary to reflect new restrictions on the way people can live and work.

9. In addition, many public services, including central and local government and those involved in health and social care, are in the front line of the effort to control the spread of the coronavirus and respond to the pandemic. In many cases, these public services are planning for an extended period when much larger numbers of their staff will be unable to work due to following public health guidance, which could require self-isolation or social distancing, due to increased levels of illness, or due to caring responsibilities increased by or associated with the coronavirus outbreak. In many cases, central and local government, as well as other public services, are having to re-deploy substantial parts of their workforce temporarily, or re-prioritise work across their functions and responsibilities, in order to focus on work which responds to the coronavirus outbreak and which protects the health of people living and working in Scotland.

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10. This unexpected shift in resourcing and prioritisation will require a number of the burdens and duties on public services in Scotland to be adjusted temporarily, to reflect the need for them to respond to the coronavirus outbreak, and protect the health of people living in Scotland.

11. In deciding how to respond to both (i) the unexpected change in how public services, business and private lives in Scotland are conducted, and (ii) the extraordinary pressures on those involved in the effort to control the coronavirus outbreak, the Scottish Government has taken into account its responsibility first and foremost to protect the lives and health of the people living in Scotland. It has also borne in mind the unprecedented pressures on Scottish business and on the public sector in Scotland, and the effect of the substantial adjustment to the way people are being asked to live by public health guidance, and required to live by the 2020 Regulations.

12. To support these aims, the Bill takes the following measures:

- it makes adjustments to criminal procedure, and to other aspects of the justice system, to ensure that essential justice business can continue to be disposed of throughout the coronavirus outbreak;
- it makes adjustments to the law on evictions to protect those renting their homes during the coronavirus outbreak;
- it makes a range of provisions designed to ensure that business and public services can continue to operate effectively during a period where controls on movements have been imposed, and when pressures on public services are acute.

13. The Bill is part of a concerted and coordinated effort within Scotland, and across the UK, to tackle the Covid-19 outbreak. It has been developed taking into account the effects of the 2020 Act, the 2020 Regulations and the other legislative and administrative aspects of the governments of the United Kingdom's effort to combat the coronavirus outbreak.

14. The Scottish Government is committed to keeping the provisions of this Bill under review at all times, under the scheme set out above. No measure can last longer than 6 months without the Scottish Parliament's approval. Where measures are no longer appropriate or proportionate, the Scottish Ministers can terminate them earlier than they would otherwise expire under the Bill. Scottish Ministers are required by the Bill to report on the measures in the Bill in order to facilitate and to encourage this process of scrutiny and review. In all cases, in making decisions about the

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continuing appropriateness and proportionality of the measures in the Bill, the Scottish Government is committed to taking into account the views of those affected by the Bill.

Overview

Provisions in the bill

Private and Social Rented Sector – Preventing evictions (Section Two and Schedule 1)

15. The Bill provides that all notices for recovery of possession except in relation to tenant abandonment issued by a landlord for private and social rented sector tenancies, in the period between commencement of the provisions and 30 September 2020, will be subject to an extended notice period of up to 6 months. The Bill will also enable the extension of this period should circumstances require.

16. Provisions also provide that all private rented sector grounds of repossession are made discretionary for the period between commencement and 30 September 2020. This means that private rented cases going before the First-Tier Tribunal (Housing and Property Chamber) will be considered on a discretionary basis. This ensures the Tribunal is able to take all circumstances of a case into account when determining whether to grant an eviction order as the Courts can currently do for social rented sector cases.

Social Security (Schedule 7 Paragraphs 1-5)

17. The Bill makes a number of adjustments to ensure there is no adverse impact on eligible clients' ability to apply for or appeal against a decision on entitlement as a result of coronavirus, and to provide the operational flexibility necessary for Social Security Scotland which will be operating at a reduced capacity. The provisions allow for a range of statutory timescales to be relaxed where these cannot be met as a direct result of coronavirus.

Adults with incapacity (Section 4 and Schedule 3 Part 2)

18. The Bill makes provision to ensure that existing guardianships can be extended where disruption due to the coronavirus means that applications for renewal of guardianship are not reaching court before the existing guardianship expires. The Bill also allows for certificates giving authority to give medical treatment to an incapacitated adult to promote their physical

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or mental health to be extended. Finally, the Bill removes the requirement to adhere to principle 4 of section 1 of the Adults with Incapacity (Scotland) Act 2000 when discharging adults lacking capacity from acute hospitals¹.

Commercial leases (Schedule 7 Paragraphs 6-7)

19. Sections 4 and 5 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 contain statutory provision relating to the irritancy of a lease for monetary and non-monetary breaches respectively. Section 4 provides, in respect of a monetary breach, that the landlord must serve a warning notice on the tenant allowing 14 days (or such longer period as is specified in the lease) to pay the arrears. If the tenant fails to do so, the landlord may irritate (terminate) the lease. Even if the tenant pays the arrears after the 14 day period has expired the landlord may still terminate the lease.²

20. The intention for the Bill is that in respect of commercial leases the period of 14 days specified in section 4 should be changed so that it becomes a period of 14 weeks.

21. In order to ensure that there is flexibility, for example to extend this period to a longer period if necessary, the Bill gives the Scottish Ministers a power to alter this 14 week period by means of regulations.

Debt relief (Section 3 and Schedule 2)

Part 15 of the Bankruptcy (Scotland) Act 2016 currently provides for a moratorium on diligence for a period of six weeks or more during which creditors cannot take action against a debtor for debts owed by them. The Bill extends the period of any new moratoria to a period of six months, and removes the limitation that only one such moratorium can be applied for in any 12 month period.

Licensing (Section 6 and Schedule 5, Schedule 5 Part 1)

22. The provisions in the Bill on licensing are intended to be a pragmatic response to the coronavirus outbreak. In some areas, the provisions empower the relevant licensing authority to extend timescales and deadlines. In other areas, they give further time to key licensing partners

¹ <http://www.legislation.gov.uk/asp/2000/4/section/1>

² <http://www.legislation.gov.uk/ukpga/1985/73/section/4>

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such as Police Scotland when views are being sought on licensing decisions. In some other areas, discretion is given to excuse the failure to meet a relevant deadline or other procedural step if the relevant authority considers it reasonable. As a package, the changes are designed to minimise the chances of licence holders' right to hold and keep a licence being adversely affected through no fault of their own as a result of the coronavirus outbreak.

23. In addition, there are a number of provisions that seek to put beyond doubt the effect of certain licensing provisions where currently there may be an inconsistency of approach between different licensing authorities. By ensuring consistency, this will again aid licence holders and ensure appropriate flexibility in the licensing system.

24. There is also a change to the current powers for Licensing Boards under the 2005 Act to relieve procedural failings. Currently, a Licensing Board may relieve any applicant or other party to proceedings before the Board of any failure to comply with any procedural provision if the failure is due to mistake, oversight or other excusable cause, and the Board considers it appropriate in all the circumstance to relieve the failure. This power does not exist in relation to relieving procedural failures on the part of the Board itself and the Bill makes provision in this area.

25. Within this context, the estimated financial impact of the provisions discussed in the following sections reflects that the intent of the provisions is to reduce costs by, for example, ensuring licence holders do not have to at some future date re-apply for licences lost through no fault of their own during the coronavirus outbreak.

Local Authorities (Section 7 and Schedule 6 Parts 3 and 4)

26. Local authority meetings are open to the public unless they are considering private and confidential business. There is also a requirement for local authorities to provide a hard copy or extracts of a document in their offices if requested by a member of the public. The Bill will allow local authorities to exclude the public from a meeting of a local authority on health grounds relating to the coronavirus. In addition, it will relax the requirement to provide hard copies or extracts of a document requested by a member of the public in their offices so that it now only has to be done if it is reasonably practicable. For instance, if the local authority office is closed then it will not be possible to do.

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Planning (Schedule 7 Paragraphs 8-9)

27. The aim is to ensure that where a full planning permission or planning permission in principle would expire then that permission should not lapse for a period of 12 months from the date on which the provisions come into force, irrespective of that development having not been commenced. The permission would only lapse if development has not commenced before the end of the 12-month period.

28. In relation to applications for approval of conditions, if the last date for making an application for an approval is within the emergency period then the time limit for making such an application is to the end of the 12-month period.

Land registration (Schedule 7 Paragraphs 11-19)

29. Following consultation with the Law Society of Scotland and UK Finance, interim proposals have been agreed that would allow some property transactions already in progress to proceed to settlement, provided an advance notice is in place.³ In order to provide certainty to transacting parties and enable property transactions to proceed to completion, changes to the existing advance notice provisions within the Land Registration etc. (Scotland) Act 2012 ("the 2012 Act") are required to prevent the protected period lapsing during the time in which the property registers are closed.

30. As the restrictions imposed by the coronavirus will continue for a sustained period, provision will also be required to allow paper deeds that would traditionally be submitted for registration by post to be submitted to the Keeper electronically. This will allow the housing market to function under the existing social distancing restrictions where absolutely necessary and prevent future property transactions from being postponed or falling through.

Business Improvement Districts (BIDs) (Schedule 7 Paragraph 31)

31. The Bill contains provision to extend the duration of BIDs that are due to end in the coming months or have very recently ended. It also revives two BIDs that have recently ended in order that they can support the local response to the crisis.

³ <https://www.ros.gov.uk/services/advance-notices>

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Anatomy Act (Schedule 7 Paragraphs 20-22)

32. The Bill makes changes to the current law by dis-applying the relevant provisions in section 11 of the Anatomy Act 1984 relating to the having possession of a body for longer than the statutory period of three years.

Justice

Conduct of trials on indictment (Schedule 4 Part 5)

33. The provisions in the Bill would enable trials on indictment (solemn cases) to be conducted by the Sheriff or High Court Judge. This means that they would consider and decide the verdict in these cases rather than a Jury.

34. Judges already possess the skills to deal objectively with evidence and assess the credibility of witnesses and in Scotland they already undertake this role in summary business. Other jurisdictions prosecute serious crime by means of judge trial. This change would only be for the period of this emergency and its immediate aftermath in order to ensure that any backlog of serious cases that may have built up does not become unmanageable. It is Scottish Government policy that there should be a return to jury trials as soon as it is considered feasible.

35. This solution is however only to be considered as an emergency measure to be able to deal effectively with the impact of the coronavirus outbreak on the most serious cases in the criminal courts. For that reason it would not come into effect immediately. The provision in the Bill provides that Ministers would commence this measure by secondary legislation if they consider it is necessary and proportionate to do so to ensure that the criminal justice system continues to operate effectively during the period and immediate aftermath of the coronavirus outbreak.

Emergency release for prisoners (Schedule 4 Part 9)

36. Scottish prisons currently operate at staffing levels which are designed to allow for the safe and appropriate supervision and support of those in their care. A loss of a significant number of Scottish Prison Service staff overall or within individual establishments would risk the safe operation of Scotland's prisons. This is separate to any additional pressures associated with prisoners also being infected. In this worst case scenario it is likely that other parts of the justice system will be affected and the pace of convicted and remand prisoners feeding into prison may slow.

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In very extreme circumstances with excessive staff shortages, impacting on supervision, medical services, etc, it may be necessary to consider whether to release certain prisoners early from prison, to allow prisons to continue to operate effectively, taking account of the level of staffing. The Bill makes provision that Ministers can by regulations provide for the early release of certain prisoners in order to protect the security and good order of the prison and the health, safety and welfare of anyone accommodated or working in the prison. The Scottish Ministers can make different provision in the regulations for: different classes of person, prisons or classes of prison or other different purposes. Prison Governors can veto release where they think release would involve an immediate risk of harm to an identified person and there are a number of categories of prisoners who are excluded from being released under the regulations. The regulations made under these provisions are time-limited and cease to have effect after 180 days (or 28 days if made under the expedited procedure and not affirmed within that period), although release undertaken during their extant period will still remain in effect.

Sheriffs' Scotland-wide jurisdiction in custody cases (Schedule 4 Part 3)

37. The Scottish Government considers providing for a new national jurisdiction for dealing with appearances from custody will create the necessary flexibility so as to allow implementation of Police Scotland and the Scottish Courts and Tribunals Service's (SCTS) contingency plans in response to the coronavirus pandemic.

38. Accordingly, the Bill makes provision that, for the purpose of dealing with an individual appearing from police custody, and any continuation of the case up until a plea of not guilty is tendered (if that occurs), a Sheriff's jurisdiction is not territorially limited but instead extends throughout Scotland. This will allow the national sheriff to deal with questions of liberation and dispose of cases where there are guilty pleas, enabling these to be moved out of the court system and therefore minimising the number of cases for transfer to local court.

Statutory time limits in criminal proceedings (Schedule 4 Part 4)

39. The Bill makes provision to extend the time limits contained in the 1995 Act so that, from the coming into force date of these provisions, there is a period during which all these time limits are suspended at the point

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which had already been reached in the individual case and any new case has an extended time limit.

40. The time limits to which the provision applies are those at section 65 of the 1995 Act which sets various time limits in respect of trials under solemn procedure, section 136, which sets the time limit within which a summary-only prosecution must commence after the alleged offence was committed, section 147, which makes provision for summary procedure in cases where the accused has been held on remand, section 52T, which applies the custody time limits in section 65 and 147 where the accused is detained in hospital because of an assessment order or a treatment order and section 201, which sets time limits for adjournment of a case to obtain background reports prior to sentencing.

Alternatives to prosecution (Schedule 4 Part 2)

41. The Scottish Government considers providing for the expansion of the use of alternatives to prosecution by increasing the maximum available fixed penalty available to Procurators Fiscal will allow a greater range of cases to be considered for disposal outwith the court system. This will enable justice to be done in individual cases while easing the burden on the criminal courts which will be beneficial during the coronavirus outbreak.

Admissibility of hearsay (Schedule 4 Part 6)

42. The Bill also increases the circumstances in which an application to the court to admit hearsay evidence can be made. Impacts of the coronavirus outbreak such as self-isolation measures may result in some witnesses being unable to attend court in person. In some such cases, they may be able to give evidence by other means such as video-link, but there may be other cases where it is not possible for them to do so. This measure is intended to reduce the impact of coronavirus on court business by enabling an application to be made in circumstances where the witness cannot, for a reason relating to coronavirus, attend the trial or give evidence in any other way. This will still be a measure of last resort.

Electronic signatures and transmission of documents (Schedule 4 Part 1)

43. The Bill will allow documents produced by a court or tribunal, or connected with criminal or civil proceedings, to be signed and transmitted electronically, removing the existing requirement for physical movement and contact. This will enable documents to be sent, served and lodged by means of email or other electronic means.

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44. These provisions aim to minimise the requirement for court personnel, officers of court and legal practitioners acting on behalf of parties to proceedings to be physically in contact or on justice premises and will allow justice organisations the flexibility they require properly to prepare for a possible escalated health response.

Suspension of requirements for physical attendance and attendance by electronic means (Schedule 4 Part 1)

45. The Bill provides that any participant in either criminal or civil proceedings (judge, clerk, legal representatives, parties to proceedings, accused, convicted persons, appellants, witnesses) can take part in any proceedings by way of live visual (television) or audio (telephone) link from any location. This will extend to the ability to conduct fully audio or video-enabled procedural hearings, where no one is physically in the same place, or in a court or tribunal building.

46. These provisions will significantly reduce the requirement for justice officials and parties to proceedings to be physically present in court and tribunal buildings, minimising physical contact and unnecessary exposure to the risk of infection for justice officials and the public during the period of coronavirus outbreak.

Legal Aid payments (Schedule 4 Part 10)

47. Ministers have engaged with the Legal Aid Board (the Board) to identify steps that should be taken now to mitigate the risks to the profession. Some of these steps can be achieved within existing powers, where the Board has discretion to allow for departure from the rules (for example, to allow accounts to be submitted late if administrative support services have been disrupted) and others can be effected by regulations. However, the Board has identified that increasing the availability of interim payments would support solicitors and counsel to continue delivering services under legal aid, with acceptable levels of risk to the Board, and it is considered that this can only be achieved by way of primary legislation.

48. The specific measures that have been identified as being required through primary legislation are:

- reduction of the level of scrutiny required before interim payment may be made;
- enhanced powers of recovery in the event of overpayments resulting from interim payments;

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- removal of conditions for counsel to be able to apply for interim payment.

Community sentences (Schedule 4 Part 7)

49. This proposal has three aspects, aimed at addressing immediate issues around unpaid work; issues which may arise in the near future in relation to other requirements of community orders; and issues which will likely be encountered once normal (or near-normal) court activity resumes.

50. The first aspect of the proposal is to extend the time limit for the completion of all unpaid work or other activity requirements by 12 months (i.e. whatever time limit has been imposed by the court for completion of unpaid work in an individual order, the new time limit will be 12 months later). This time limit will be alterable by SSI, in order to allow it to be extended should that be necessary. A restriction will also be placed on courts for the period during which the legislation is in force, to ensure that any new unpaid work or other activity requirements have a time limit of at least 12 months from the point of imposition. Together, these measures will allow justice social work to suspend all unpaid work programmes for the duration of the crisis without affecting the ability of offenders to complete those within court-directed timescales.

51. The second aspect of the proposal is to enable the postponement of certain community orders – or requirements contained in those orders - for a specified period. The orders or requirements to be postponed would be defined in an SSI by reference to any or a combination of the type of order (e.g. Community Payback Order); the requirements imposed under an order (e.g. supervision requirements); the type of offender; and the type of offence the offender has been convicted of. On the expiry of the specified period, the orders or requirements will progress as if no time has elapsed since the postponement was put in place (but obviously moving forward relevant timescales/deadline to account for this), allowing the requirements to be carried out post-crisis. Should the first aspect of this proposal be insufficient to enable justice social work to service all remaining community orders (or should the situation worsen significantly), this power will enable the postponement of other orders and allow a focus on higher risk cases.

52. The third aspect of the proposal is to enable the alteration in bulk of the requirements of community orders which have been imposed by the courts. The issue this seeks to resolve is slightly longer term; given the need to delay the carrying out of unpaid work (and possibly other

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requirements should the second aspect of this proposal be used) there is likely to be an unmanageably large number of hours of unpaid work (and possibly other requirements) due to be carried out post-crisis. This aspect of the proposal would enable the Scottish Ministers, by SSI, to reduce or vary the requirements of orders, or to revoke orders entirely, in order to prevent the system being unable to deliver the outstanding orders in due course. As with the second aspect of this proposal, the affected orders would be defined through some combination of the type of order; the requirements imposed under an order; the type of offender; and the type of offence the offender has been convicted of.

Parole hearings (Schedule 4 Part 8)

53. The provisions allow for another member of the Board to be able to take over the functions of the Chair in the event that the current chair is unable for coronavirus reasons to carry out their functions. The provisions also allow the Chair to proactively delegate a particular function or functions to another member or members now, to improve the Board's resilience in advance of possible absences by Board members due to coronavirus.

54. The provisions will also relax the Rules to allow the Board to decide for Part IV cases (Tribunal hearings) that an oral hearing is not necessary where the interest of justice do not require it. This will allow them the same flexibility they have for Part III hearings already. The provisions also make clear that the entirety of the proceedings of the Board, and not just evidence gathering by the Board, can be carried out by audio-visual link or by phone. This will reduce the risk of infection to Board members, prisoners and others involved.

55. The provisions also omit "prisoner" from Rule 2 (Interpretation), so as not to require prisoners, who have been recalled under section 17(3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, and are in the extended part of their sentence, to be considered under Part IV of the Rules. These prisoners will now be dealt with under Part III of the rules. This has the effect in those cases able to be decided on the papers alone, of reducing the number of Board members required to determine such a prisoner's cases from three to two. This increases the likelihood that hearings can still take place if a large number of parole board members are unable to work.

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Children’s hearings and child protection (Section 4 and Schedule 3 Part 1)

56. The Bill amends Section 5 of the Children’s Hearings (Scotland) Act 2011 to enable a children’s hearing to consist of less than three members of the Children’s Panel where it would not be practical to comply with that provision because of the coronavirus outbreak. Similarly, the Bill also disapplies the requirement for male and female panel members where it would not be practical to comply with it.

57. The Bill makes a number of adjustments to time limits, e.g. in relation to foster care placements, kinship placements, and emergency orders.

58. It will remove the upper limit for the period of the emergency to ensure foster carers can look after additional children if required, and where local authorities deem it safe to do so.

59. It also allows for electronic authorisation of decisions and dispenses with personal appearance in proceedings.

Freedom of Information (FOI) (Schedule 6 Part 2)

60. The Bill makes three main changes to the Freedom of Information (Scotland) Act 2002 (“FOISA”):

- to extend the deadlines for responding to requests and reviews from 20 working days to 60 working days
- to enable Scottish public authorities to extend the period of 60 working days by a further period of 40 working days in certain circumstances
- to provide that, in any event, a Scottish public authority does not fail to comply with its duties under Part 1 of FOISA if it has reasonable cause for responding outwith the relevant timescales

61. Additionally, the Bill contains a minor change that enables the Scottish Information Commissioner (“the Commissioner”) and Scottish public authorities to issue formal notices by electronic means.

Costs on the Scottish administration

62. Costs incurred by the Scottish Government for each policy area set out in the Bill are included below, covering each policy area in the order in which they appear in the policy memorandum, as follows

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- preventing evictions
- social security
- adults with incapacity
- commercial leases
- bankruptcy
- licensing
- local authorities
- planning
- land registration
- Business Improvement Districts
- Anatomy Act
- justice
- Children’s hearings
- Freedom of Information

Further details on each of these policy areas are provided below. Costs to be met by the Scottish Government, whether upfront payments or reimbursement of costs met by other bodies, will be provided for in the relevant Budget Acts and budget revisions.

Private and Social Rented Sector – Preventing evictions

63. The Scottish Government does not anticipate that the Bill will impose additional costs on the Scottish Administration in relation to the provisions for the social rented sector.

64. There may be additional costs to the Scottish Administration in relation to the costs for the First-Tier Tribunal for Scotland (Housing and Property Chamber) should the provision to make all repossession cases discretionary increase the length of time a private rented sector case takes to determine.

65. During 2018-19, the Housing and Property Chamber received 3781 applications across ten jurisdictions, and 3,196 applications were closed during the year. The vast majority (85%) of applications received fell within

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the new private rented sector jurisdiction. Almost half (43%) of all applications received were for eviction.

66. The complexities caused by the current postponement of all cases in the tribunal and the uncertainty about the nature of measures to deal with a backlog of cases means that it is not possible to project costs over the next two financial years. However, given the proportion of cases that relate to evictions, if these attract additional costs due to prolonged processing or hearings, it could be anticipated that costs would rise. Funding to the SCTS in respect of private rented sector cases was £2,583k in 2018-19 and £3,942k in 2019-20. Case numbers are projected to rise further in 2020-21.

Social security

67. The Social Security provisions are intended primarily to ensure there is no adverse impact on eligible clients' ability to apply for or appeal against a decision on entitlement as a result of coronavirus, and to provide the operational flexibility necessary for Social Security Scotland which will be operating at a reduced capacity. The provisions allow for a range of statutory timescales to be relaxed where these cannot be met as a direct result of coronavirus. They do not change existing eligibility criteria or widen eligibility to additional individuals. The relaxations apply for a time limited period and only apply to benefits that are already paid by Social Security Scotland.

68. Clients will not receive any additional payments as a result of these measures and the provisions enable them to claim their existing entitlements or exercise existing rights, which they might not have been able to do as a direct result of coronavirus.

69. As a result the Scottish Government does not anticipate there are additional costs as a result of these provisions.

Adults with incapacity

70. Provisions to postpone renewal of guardianships and medical certificates will create no additional costs on the Scottish Administration.

Commercial leases

71. The provisions in the Bill will have an impact on landlords of commercial property. Core Scottish Government bodies do not hold any

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non-operational property and so would not be affected by these provisions. The costs to individuals are described later in the memorandum.

Bankruptcy

72. The costs for the Scottish Administration will be minimal. This is an extension of an existing scheme, which will adopt the same arrangements as the existing scheme. There will be minor costs associated with minor IT development, changing of forms, amending guidance and informing key stakeholders. Costs to the Scottish Government in its role as a creditor are discussed in the later sections of the memorandum.

Licensing

73. There will be no costs falling on the Scottish Administration.

Local Authorities

74. Excluding members of the public from local authority meetings on health grounds and relaxing an obligation of local authorities to provide extracts of hard copy documents in their offices is not expected to impose any additional costs on the Scottish Administration.

Planning

There are no direct costs or savings to the Scottish Administration through these provisions.

Land Registration

75. In order to facilitate the remote submission of applications for registration as provided for in the Bill, additional functionality will be required to be made to the Keeper's existing online services. Based on an assumption of 2 developer teams of 15 at a blended date rate of £550 per day, the Scottish Government anticipates a technical build lasting between 2 to 4 weeks with a forecast cost of between £165,000 and £330,000.

76. Operationally, costs are likely to be neutral with costs relating to staff training and stakeholder awareness raising expected to be offset by potential savings realised from electronic submission.

77. Depending on the duration of the crisis it may be necessary to further develop the proposed solution.

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Business Improvement Districts

78. There are no direct costs or savings to the Scottish Administration through these provisions.

Anatomy Acts

79. There are no direct costs or savings to the Scottish Administration through these provisions.

Justice

Conduct of Trials on Indictment

80. To better inform the context for these measures, the figures below show the number of evidence led solemn trials, where a jury would have been involved.

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	2019/20				
	Q1	Q2	Q3	Q4	Full Year
	Quarter 1	Quarter 2	Quarter 3	Q4 (estimated)	(estimated)
High Court - evidence led	107	146	120	124	497
Summary Solemn - evidence led	299	291	292	294	1,176

81. Using data from the Costs of the Criminal Justice System in Scotland⁴, it is estimated that, in normal circumstances, the costs to the justice system of these trials would be as follows:

Estimated Costs associated with 2019/20 Evidence led trials			
	High Court	Summary Solemn	Total
SCTS Costs	£8,300,000	£2,600,000	£10,900,000
COPFS Costs	£33,600,000	£5,100,000	£38,700,000

⁴ <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot> Costs used are the average cost for trials per organisation for High Court and Solemn cases rather than those broken down by types of procedure.

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SLAB	£8,000,000	£1,900,000	£9,900,000
Total	£49,900,000	£9,600,000	£59,500,000

82. This demonstrates that significant resources go into preparing for and carrying out these trials. They also have impacts across the system, particularly in terms of the sentences imposed – creating demand for custodial places and for community sentences (e.g. demands on the prisons and community justice social workers). Even if these cases had proceeded without a jury then many of these costs in holding these trials would still have been incurred.

83. Impacts on different organisations would however be different in terms of the costs involved with carrying out jury led trials. SCTS dedicate significant resources to the management of juries so in more typical times, it might be reasonable to compare the difference in duties for a clerk in solemn and summary trials to estimate the savings that a measure such as this would have in terms of SCTS resourcing.

84. However, as these powers would not be deployed in a normal context in which savings could be realised and instead they would be deployed elsewhere, the net result will be no significant savings as a result of this legislation. Even in the relatively limited context of a trial that does go ahead with a judge rather than a jury, it is likely that additional resources will be required to run that trial in the current context. For example, savings in time by not empanelling a jury may be cancelled out by delays in facilitating remote access for witnesses, or delays where key participants within the trial are unable to contribute because of the outbreak.

85. As with the discussion of the direct costs of running a trial, the impacts on the Scottish Prison Service would largely depend on how these powers are used within the context of the current situation. If, for example, a trial went ahead that otherwise would not, it is possible this could lead to savings (especially where the accused is on remand, and therefore, if acquitted, would be released earlier than they otherwise would have been). The cost of a prison place per year is estimated to be just over £37,000. Therefore there may be a cost saving of approximately £3,000 for each

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month of remand averted. However, the reverse is true for a trial where the accused is on bail, but is found guilty and receives a prison sentence.

86. Overall it is not possible to say whether this measure would lead to savings. However this does underline the need to take into account the impacts that this measure could have on the prison population– especially in the context of other emergency legislation designed to give SPS greater flexibility in managing the prison population to maintain the safety of staff and prisoners.

87. The only potential saving that has been identified that may lead to a realised saving relates to SCTS expenditure on juror costs. For the year 2018/19, SCTS spent almost £4 million (£3,780,958) on Jury Operational Costs. On this basis there could be cashable savings of around £1 million for each three-month period that this applied for.

Early release of some prisoners

Costs and savings to the Scottish administration will fall into the following main areas:

88. Scottish Prison Service (SPS) additional staff costs for processing additional releases. This will be dependent on the number of additional considerations for release and the process used, which will affect the number of additional hours of staff time required and any increase in payment rates for these hours. This has not been fully quantified at this time, but efforts have been made to determine hourly rates that would inform costs once further detail is available.

89. The costs associated with routine prisoner release are already accounted for within the SPS budget. However, depending on the numbers that need to be processed, the timeframe for doing this and the associated process including risk assessment, staff may be required to work in excess of their contracted hours. It is not possible at this stage to predict in any detail what this might be. In addition to their hourly rate, this work will attract additional payments of between of 30% and 60% of their hourly rate (in practice this ranges from £15.38 to £70.82).

90. SPS would anticipate a reduction in direct costs from a reduction in prisoner numbers. The indicative savings which SPS have modelled are approximately £7 per prisoner, per day. The figure of £7 comprises of a number of different expenses including not having to provide food for a

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prisoner or pay wages to prisoners. It is recognised that these are far lower than the total costs of imprisonment, as most of these savings could not be recovered due to the fixed nature of many costs.

91. There are some potential savings in relation to electronic monitoring. It is assumed that some short sentence prisoners who would have received Home Detention Curfew (with associated electronic monitoring costs) would receive emergency release without electronic monitoring. The savings from electronic monitoring would be influenced by the size of this cohort of people as well as unit costs for electronic monitoring. Current contract costs (which may be revised) are an average daily cost of approximately £8 per monitored individual, with a one-off charge of £119.29 for the combined activities of install/de-install.

92. There are some potential costs from electronic monitoring. It is assumed that some longer sentence prisoners (sentences of four years plus) who would not have been released without emergency release would be released with electronic monitoring costs. Again, the contract unit costs for electronic monitoring would need to be applied to the scale of this potential cohort and length of time on monitoring (which are unknown at this time).

93. Taken together, there are possible costs and savings for conducting additional assessments, reductions in direct prison costs and both potential costs and savings for electronic monitoring. Unit costs and hourly rates of associated staff have been collated (as set out above) to assist with further considerations. To use these unit costs to produce even indicative estimates of the total net cost or saving to the Scottish administration would require further knowledge of:

- The type of risk assessment process that will be used.
- The number of short-term prisoners who would be released and how much earlier than they would otherwise have been released.
- The proportion of these short term prisoners who would have otherwise gone on to be release on Home Detention Curfew with electronic monitoring.
- The number of long-term prisoners who would be released and how much earlier than they would otherwise have been released.

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94. The current analysis cannot conclude whether these result in a net cost or saving to the Scottish Administration. Furthermore, any prison savings are relatively small in the context of the wider SPS budget (£442.2 million in 2020/2021) and savings may not necessarily be realised. The purpose of this legislation is to help give the system the flexibility it needs to respond to a crisis. It is acknowledged that the costs of that crisis will dwarf any - relatively minor – releasable savings that can be made as a result of these measures.

Allow sheriffs and summary sheriffs to exercise Scotland-wide jurisdiction

Police Scotland

95. It is expected that a move to a new national jurisdiction for dealing with appearances from custody will have a financial impact on Police Scotland.

96. It is expected that, if a new national jurisdiction for dealing with appearances from custody is created, Police Scotland intend to move to a smaller number of more centralised police custody suites across Scotland.

97. This measure will enable Police Scotland to restrict unnecessary movement of people in the justice system via custody procedures and reduce the requirement to move prisoners around the country to attend court proceedings, potentially generating some savings.

98. However, there will be costs to Police Scotland arising from the need to coordinate and facilitate the safe movement of prisoners within the centralised custody suite setting to the rooms with video-links to the court as well as the associated administrative processes.

99. As people will be held in a smaller number of designated police custody suites, they may require to travel greater distances than they ordinarily would to be held prior to their appearance in court. An example of such a situation might be where an individual is arrested in, for illustrative purposes, Stonehaven for a crime allegedly committed there and is then taken to a centralised custody facility in Dundee, for appearance the next day at Dundee Sheriff Court. It is therefore expected there will be an additional cost to Police Scotland relative to the additional care and welfare of people being held in police custody for a longer period than they are currently with the provision of at least one extra meal per person given.

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Scottish Courts and Tribunals Service (SCTS)

100. There are no anticipated quantifiable costs or savings for the SCTS as a result of extending sheriffs' jurisdiction throughout Scotland for the purpose of dealing with an individual appearing from police custody. It is expected the provision will simply redistribute the cases to which it applies across the country.

Suspension of statutory time limits

COPFS

101. The majority of the cost to COPFS is the preparation of cases for indictment and trial. These cases will continue to be prepared. It is likely that there will be small savings to COPFS during the suspension period. These will be reduced staffing costs as there will not be a need to make applications to extend time limits in individual cases.

SPS

102. It is expected that the reduced capacity of the courts to process criminal cases as a result of the coronavirus outbreak could have a financial impact on SPS arising from its impact on the prison population. These costs do not necessarily arise from the suspension of statutory time limits applying in criminal cases as, under the existing law, it is possible for the parties to apply for these time limits to be extended on cause shown. If there was no provision for the suspension of statutory time limits in all criminal cases, it is likely that in most, if not all, cases, the time limits would be extended on a case-by-case basis.

103. The impact of delays in court business on the prison population is difficult to estimate as it is highly dependent on how the courts react to any reduction in capacity both in terms of how business is prioritised and how decisions on, for example, bail, are made.

104. On the one hand, the suspension of time limits in cases where accused people are being held on remand could lead to a temporary increase in the prison population arising from an increased number of remand prisoners. In the most extreme case, if prisoners continued to be remanded at the same rate per month as is the case at present but there was no court business at all for 3 months / 6 months for summary and solemn cases, with all those remanded spending an additional 3 / 6 months in prison custody, initial estimates suggest that this could theoretically result in a significant increase in the remand population after 6 months.

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However, in practice, the courts' practice in deciding whether to remand prisoners would be influenced by their knowledge of whether cases are likely to proceed in court, it is likely that if there were a shut-down of criminal court business, remand would be used very sparingly in summary cases. Other factors which might be expected to reduce new remands further during this period would include Police Scotland and COPFS operations with respect to new cases.

105. It is worth noting that section 30 of the 1995 Act provides that a person being held on remand can apply at any time to the courts for a bail review. It is likely that, in the event of a near complete shut-down of criminal court business, the courts would be likely to grant bail to, especially, people being held on remand in relation to charges in the summary courts, who make up a significant proportion of all those remanded each year.

106. Any increase in the prison population arising from prisoners being held on remand for longer due to delays in hearing their cases would be offset by a concomitant reduction in the number of people being sentenced to imprisonment over the same time period. Taking the most extreme case, if there were no criminal disposals at all for a period of 6 months, this could result in a significant reduction in the prison population. Changes in factors that will influence remand populations at this time, including the way that remand is used, would need to be considered against this change of sentenced prisoners to help ensure that any possible increase in prisoners being held on remand is balanced.

107. This initial analysis illustrates that a considered approach will be required to balance the objectives of managing the size of the prison population, ensuring public safety and the efficient processing of court business during the coronavirus outbreak. It is important to note that the Bill also provides a power for the emergency release for prisoners, modelled on current UK Government powers under section 32 of the Criminal Justice Act 1982, which provides for additional flexibility in managing the prison population.

Expansion of alternatives to prosecution options

108. There is a large degree of uncertainty in terms of assessing the impact of this increase in the maximum level of a fiscal fine. This reflects the circumstances within which the change is being made. However, it is estimated that there will be minimal costs for the COPFS arising from the

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109. These costs will likely primarily relate to:

- amending/drafting internal and external guidance,
- amending style letters,
- making changes to the IT system.

110. These should be seen as “one off” costs attributable to resourcing and staffing costs to implement and test the necessary changes.

111. Use of the increased maximum level of a fiscal fine will be considered on a case-by-case basis by prosecutors. The measure will potentially provide for a greater number of cases to be dealt with by way of a non-court disposal, where prosecutors consider that this is an appropriate and proportionate response in the public interest.

112. Although this could result in reduced costs arising from fewer court proceedings, the Scottish Government anticipates that, in practice, any associated savings to COPFS and the SCTS which would ordinarily be effected as a result of diverting a greater number of cases from prosecution are largely notional savings. It is anticipated that the number of court cases will be limited by the significantly reduced operational capacity to deal with court proceedings as a result of the coronavirus outbreak.

113. As such, it can be seen that the increase in the maximum level of a fiscal fine will allow for alternative action to prosecution to be taken in a wider range of cases, where such action is assessed as appropriate by prosecutors.

Increasing discretion of court in relation to admissibility of hearsay statements

114. The use of section 259 of the Criminal Procedure (Scotland) Act 1995 which provides for exceptions to the inadmissibility of hearsay evidence, will be a secondary option that may be applied when a witness cannot attend court to give evidence in person and cannot give evidence remotely using a live video link. Accordingly, the number of cases in which it is used is likely to be relatively limited.

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115. COPFS will incur some additional costs in relation to the additional staff time which will be spent drafting and submitting written applications in terms of section 259 and in relation to updating guidance and providing training to staff. Set against this, it is anticipated that there will be small savings for COPFS in relation to witness expenses. If a witness's statement is used as their evidence in terms of section 259, COPFS will not require to reimburse provide travel and subsistence costs.

Conduct of business by electronic means

116. In relation to the signature and transmission of a wide range of documents connected with criminal and civil matters, implementation of these provisions is likely to incur only minimal outlay and recurring costs. It is expected that these provisions can largely be utilised using existing IT systems and equipment, such as laptops and software including email systems and COPFS' Secure Disclosure System (SDS).

117. These provisions, together with provisions in relation to suspension of requirements for physical attendance, will allow procurators fiscal and judges to remotely access and approve warrants, with police officers being able to provide evidence on oath via telephone both during and outwith office hours. This will generate some minimal reduction in costs associated with travel and out of hours expenses.

118. Savings are expected to result from a reduction in the requirement to print documents, which would otherwise require to be signed and served in hard-copy format. There will also savings in relation to courier and personal service from court officers.

119. In addition, the provisions are also expected to extend to civil proceedings involving public bodies such as Her Majesty's Revenue and Customs, Accountant in Bankruptcy (AiB), and the National Health Service (NHS Scotland). Again, it is considered the costs arising from implementation will be minimal, with some non-cashable savings arising as a result of staff not having to travel to send and receive official documentation.

Attendance by electronic means

120. At present, SCTS, and in some cases Police Scotland, COPFS and SPS are already equipped for the use of remote hearings, to facilitate use of existing provisions relating to detained persons, vulnerable witnesses and those who are required to attend from outside the UK.

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121. However both capital and revenue outlay for necessary additional hardware (laptops, cameras and other remote devices) can be anticipated to support implementation of these provisions.

122. Both SCTS and COPFS are likely to incur software licencing costs, associated ongoing system maintenance and operational resource to manage bookings system for video links, with the majority of costs likely to fall to SCTS. These costs are however difficult to quantify, as the operational reliance on these provisions will be dynamic and responsive to developments associated with the coronavirus outbreak.

123. Capital costs will be incurred by Police Scotland in relation to expanding the infrastructure to support enhanced police to court video linking for first appearances from custody. Some equipment has been installed already in the primary policy custody centres, but there may be a requirement to expand these during the period of coronavirus outbreak.

124. There are potential additional capital costs falling to Police Scotland related to enabling confidential solicitor to client video linking for interviews which take place both before and after the first appearance in court.

125. While a temporary reduction in movement of prisoners is anticipated, this is not expected to generate savings taking account of the full circumstances to be managed during the period of coronavirus outbreak.

126. The legal defence community may incur costs to enable participation in remote court proceedings, although it is expected that many agents may already have access to existing IT used for video calling to clients that are on remand or serving sentences.

Increase the availability of interim Legal Aid payments to solicitors and advocates

127. The Legal Aid budget is £137,450,000, and expenditure is spread across a financial year. The provisions in the Bill will allow for earlier access to payment rather than payments at the end of a case. This will change the profile of expenditure across the year, but will not increase the gross expenditure. On this basis, it is anticipated to be broadly cost neutral.

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Cases extending beyond the operating financial year will be kept under review.

Measures relating to community sentences

128. There is likely to be some impact on the SCTS if certain community orders are postponed. In particular, there will likely be an increased workload for the courts immediately after restrictions relating to the pandemic are lifted in having to deal with applications, hearings etc. associated with orders which have been suspended for a period of time in addition to those new orders being created once the courts have returned to normal operation. It is not possible to quantify the potential impact of this at present – particularly given uncertainty around whether and exactly how some of the powers in the proposal will be used (both in terms of the orders which may be postponed, and any alterations which may be made to the requirements in those in due course).

Reduce face-to-face parole hearings

129. There are no direct costs associated with the Bill's provisions that will fall to the Scottish Government in respect of parole. However, it should be noted that the Parole Board for Scotland may expect the Scottish Government to pick up any additional costs incurred by the Board in respect of payment of fees to members who are self-isolating and unable to carry out their functions, or if they are ill. It is not possible to estimate how much this might cost as the Scottish Government does not know whether any members are affected, and for how long.

Children's Hearings

130. The Bill has the potential to secure some cost savings, as, due to the extension of timeframes set out in the Bill, it will not be necessary to conduct various hearings. Specifically, it is expected that around 1700 hearings may not need to be convened to make decisions on interim compulsory supervision orders (ICSOs). In a similar way, some hearings linked to the review of existing compulsory supervision orders (CSOs) may not need to be convened. In 2018/19, some 20453 children's hearings were linked to the review of existing CSOs.

131. The impact on the SCTS expected to be broadly cost-neutral. There were 824 appeals in 2018-19. This is because all valid appeals will still be heard, but in an extended timeframe.

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FOI

132. The Scottish Ministers and non-ministerial officeholders in the Scottish Administration are Scottish public authorities for the purposes of FOISA. They have to comply with the duties imposed by FOISA, principally in responding to requests for information. While authorities incur costs in complying with those duties, the changes proposed in the Bill do not impose additional duties on Scottish public authorities. Nor do they make the existing duties more onerous. Instead, they extend the time authorities have in which to comply. It is expected that the amount of work involved in responding to requests will not change: authorities will simply be able to spread it over a longer period of time where appropriate. This should enable authorities to free up resources to respond to the coronavirus pandemic, and to ensure that their response to it is not compromised.

133. Accordingly, it is not expected that there will be any additional costs or savings arising for the Scottish Administration as a result of the changes proposed in this Bill.

Summary of estimated costs and savings to the Scottish Administration

	2020-2021
Housing policy	Increased costs possible but unable to quantify at this stage.
Early release of prisoners	£0.3 to £3.8m non-cashable savings/efficiencies to SPS (resource required elsewhere)
Jurisdiction of sheriffs	Some non-cashable savings/efficiencies to Police Scotland (resources required elsewhere)
Across the board suspension of statutory time limits for a period of 6 months	Potential for significant costs to SPS of any increase in housing those on remand
Expansion of alternatives to prosecution options	Potential for some efficiencies for COPFS, but non cashable (resources required elsewhere)

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Increasing discretion of court in relation to admissibility of hearsay statements	Some costs to COPFS facilitating video links
Digital measures	Some costs to SCTS, COPFS and Police Scotland for digital capital investments
Legal Aid - Increase the availability of interim payments to solicitors and advocates	Some re-profiling of costs leading to earlier outlays for Scottish Government and SLAB, but cost neutral in medium term.
Land registration	Between £165,000 and £330,000

Costs on local authorities

134. Costs incurred by Local Authorities for each policy area set out in the Bill are included below, covering each policy area in the order in which they appear in the policy memorandum, as follows

- preventing evictions
- social security
- adults with incapacity
- commercial leases
- bankruptcy
- licensing
- local authorities
- planning
- land registration
- Business Improvement Districts
- Anatomy Act
- justice
- Children’s hearings
- Freedom of Information

135. Further details on these policy areas are provided below.

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Private and Social Rented Sector – Preventing evictions

Social sector

136. Local authorities have a role as landlords. For the majority of the grounds for repossession it is not expected that extending the notice a landlord must give the tenant will have a significant cost implication for landlords. However, for landlords seeking to repossess the property due to rent arrears or where the tenant is causing damage to the property, there are likely to be additional costs for landlords.

137. In 2018-2019, rent arrears on all local authority houses totalled £74 million, representing 6.2% of standard rental income from these dwellings. These arrears have been rising steadily year on year since 2013.⁵

138. Over the last three years there have been less than 1,000 cases annually resulting in a termination of a secure tenancy with a local authority landlord through eviction for rent arrears.⁶ Eviction should be a last resort and relatively few of the cases in which proceedings are issued for rent arrears ultimately end with an eviction. Evidence collected from local authorities by Shelter Scotland indicates the eviction is a costly procedure for landlords, costing between £2,000 and £6,000 per case, in addition to the loss of rental income.⁷

Year	Proceedings issued for rent areas	Number of cases of eviction for rent arrears
2018-19	28,849	947
2017-18	27,727	969

⁵ Housing Revenue Account (HRA) Statistics, <https://www.gov.scot/publications/housing-revenue-account-hra-statistics-scottish-local-authority-housing-income-expenditure-2018-19-actuals-2019-20-estimates/>

⁶ Housing statistics: Management of local authority housing, <https://www.gov.scot/publications/housing-statistics-management-of-local-authority-housing/>

⁷ Evictions by social landlords in Scotland 2016-2018, https://scotland.shelter.org.uk/__data/assets/pdf_file/0010/1790524/Evictions_by_social_landlords_in_Scotland_2016-2018.pdf/_nocache

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2016-17	26,488	877
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139. It is anticipated that the economic impact of coronavirus will mean that more tenants are at risk of being unable to pay their rent. Measures are in place to provide advice and assistance to tenants in this situation, but it is still likely that rent arrears will increase. This Bill does not increase the likelihood of tenants being unable to pay their rent, but it will delay action by local authority landlords to recover property where eviction becomes unavoidable. This may increase the total amount of rental income lost in these cases.

140. It is difficult on the available data to estimate the scale of these additional costs. There is a wide margin of uncertainty as we do not know how many cases will be affected or how much costs to landlords will increase as a result of postponing evictions. We have therefore modelled this increase at 10% of the current total costs. So if arrears increased by 10%, that would mean a cost of more than £7.5 million in lost income to local authorities. The actual costs could be significantly higher. As this legislation has effect for a limited period of time, costs will only arise in the current financial year.

Private rented sector

141. It is not anticipated that the private rented sector provisions to protect tenants from evictions will impose additional costs on the local authorities, but they may assist in saving local authorities from costs relating to the provision of temporary accommodation by helping to reduce the number of private tenants who are at risk of homelessness.

142. The average cost to local authorities of a temporary furnished flat in Scotland ranges from £318.94 per week to £494.38. The cost of emergency provision can be up to £1,370 per week.⁸ There were 10,989 households in temporary accommodation as at 31 March 2019.⁹ Preventing tenants in the private rented sector from requiring local

⁸ Cost of temporary accommodation taken from Temporary Accommodation in Scotland: Final report November 2018 https://pureapps2.hw.ac.uk/ws/portalfiles/portal/23430074/SB_TempAccomReport_FinalReport.pdf

⁹Homelessness in Scotland – 2018 to 2019 <https://www.gov.scot/publications/homelessness-scotland-2018-2019/>

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authorities to provide homelessness temporary accommodation therefore protects them from increased housing costs for this group.

Social Security

143. There will be no additional costs to local authorities as a result of the introduction of these provisions.

Adults with incapacity

144. There will be no additional costs to local authorities as a result of the introduction of these provisions.

Commercial leases

145. Local authorities hold portfolios of non-operational property and could therefore be affected by these measures. Local authorities are, however, likely to put measures in place to assist commercial tenants including; rental deferment, rental reduction and rental holiday before considering steps like eviction. The Bill allows deferment of rent payments and there would be a possible loss of income stream on a temporary basis assuming the tenant remains. There could be a possible loss if a tenant does not pay rent for 14 weeks and then quits without paying the arrears. Given the uncertainty around the number and type of commercial leases held by local authorities, and how many of these leases may be affected by the measures in the Bill, it is not possible to estimate the total costs of this measure.

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Bankruptcy

Costs to local authorities will be minimal – some minor staff training and amending of internal guidance may be required. There may be some enhanced capacity to provide money and debt advice, but this is more likely to result in additional individuals being helped than in savings to the local authority. Local authorities’ role as creditor – for example, in collecting unpaid council tax – is discussed in later sections of the memorandum.

Licensing

146. For alcohol licensing, there are Licensing Boards who are empowered under the Licensing (Scotland) Act 2005 to carry out certain functions and make decisions in relation to the sale and supply of alcohol. Licensing Boards are supported in their operation by local authorities. Licensing Boards are made up of elected Councillors from the relevant Council but are independent public bodies separate from the local authority. However, the licensing system is intended to be self-financing with the costs of the system met by fees paid by users of the licensing system through, for example, fees for obtaining a personal alcohol licence.

147. This also applies for the licensing regimes covered by the Civic Government (Scotland) Act 1982 such as taxi and private hire licensing and it is usual, though not universal, that a Licensing Board which deals with alcohol licensing will also deal with other licensing regimes.

148. There may be some minimal one-off costs for Boards as they update internal guidance, external guidance, train staff, update websites, update IT etc. to reflect the changes. However, the overall intent of the package of provisions is to build in new discretion and flexibility for Boards which will aid their operation during the coronavirus outbreak and aid users of the licensing system. The changes will reduce the burdens on Boards to, for example, have to deal with considerable numbers of licence holders seeking to obtain afresh licences lost during this period as instead licences will not be lost in such numbers due to the new flexibility and discretion available in the system.

149. With this in mind and comparing the effect of the provisions against not making the relevant changes to licensing law, it is considered there will be some efficiencies created for Boards and users of the licensing system.

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The extent of these efficiencies will depend on a variety of factors such as the way in which Boards decide to use the new flexibility and discretion the provisions provide and the number of licensing decisions, hearings etc. where the provisions may be relevant. It is not possible to quantify the extent of efficiencies as there is no available data that is helpful in estimating how Boards might use the new discretion and how many relevant decisions will arise where the new discretion and flexibility will be relevant.

Local Authorities

150. Excluding members of the public from local authority meetings on health grounds and relaxing an obligation of local authorities to provide extracts of hard copy documents in their offices is not expected to impose any additional costs on local authorities. There may be some small savings if they are unable to provide hard copy extracts of documents.

Planning

Extending the duration of existing planning permissions will not incur any costs for planning authorities where the development is commenced within the 12-month period.

Land registration

151. There are no identifiable additional costs for local authorities.

Business Improvement Districts

152. There are no direct costs or savings to local authorities through these provisions.

Anatomy Acts

153. There are no direct costs or savings to local authorities through these provisions.

Justice

Conduct of trials on indictment

154. If these powers were used to hold a trial that otherwise would not have taken place in the context of the current situation, this would be likely to increase cost pressures faced by Criminal Justice Social Workers in the shorter term. Irrespective of whether a prisoner was on remand or on bail,

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the imposition of community sentences will lead to either immediate costs on the system (in the context of community sentences continuing through the outbreak) or a greater backlog when the system starts up (in the context of community sentences being postponed). These would not represent permanent year on year savings. It is not intended that the total number of community sentences would vary as a result, but would mean more difficult profiling of these cases for community justice social work departments, and greater pressures in the short term.

Early release of some prisoners

Costs and savings to local authorities will fall into the following main areas:

- Costs for any increase in demand on local authorities for throughcare support to help short sentence prisoners reintegrate after release from prison.
- Costs associated with statutory supervision of long term prisoners, such as staff working overtime, staff being redeployed to other social work sectors, the recruitment of additional staff, and, should guidance on social distancing remain in place for a sustained period, the possible need for local authorities to invest in additional means to ensure individuals are appropriately supervised, which may include greater use of technology.
- Costs associated with local authority housing services as around 30% of prison leavers have no confirmed accommodation before their release, and an estimated 10% of the homeless population are prison leavers.
- It should be noted that wider policies will be expected to impact on local authority demands and capacity. Further details including some statistics of current demands and costs where known are presented below. Overall, it is expected that emergency release would be expected to result in a cost pressure on local authorities and not a potential area for releasable cash savings, though it is not currently possible to estimate the scale of this potential impact.

Costs Associated with Voluntary Throughcare to Released Prisoners Provided by Scottish Local Authorities

155. Every short sentence prisoner has the right to seek support from their local authority after their release, to provide assistance for their reintegration after release from prison, for a period of up to 12 months. A

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rapid increase in individuals leaving prison would create a surge in the number of individuals eligible to seek throughcare support from their local authority. But given the variation in service delivery, and the lack of separate budget arrangements, it is not possible to anticipate a potential cost. Local authorities and Criminal Justice Social Work (CJSW) would probably need to manage any increased demand to provide throughcare services alongside the increased demand for supervision services.

156. There is, however, no set standard for what support each local authority is required to provide, and so the content and availability of such services varies substantially. Uptake of these services varies across different areas. Total uptake was 1700 individuals in 2018-19. Uptake of local authority-led throughcare has reduced in recent years due to the growth of third sector services (and until 2019 the offer of post-release support from SPS). Local authority-supported voluntary throughcare activity is included in the activities funded by the Scottish Government under the annual community justice budget allocation. The decision on what and how much each local authority spends is for the local authority to decide. There is no central account of the budget applied by which area to deliver this service.

Costs Associated with the Statutory Supervision of Long-Term Prisoners

157. The impact of coronavirus is having a detrimental impact on local authority Justice Social Work (JSW) resources, and measures in the emergency legislation regarding the release of prisoners from custody may place further strain on already depleting resources. Additionally, should greater numbers of individuals be released on Home Detention Curfew, this will require assessments by JSW, which will also have resource implications (although it is noted that these assessments can be undertaken by telephone and with reference to departmental records).

158. Long term prisoners released under the prisoner release measures contained in the Bill may be required to be eligible for release on Parole Licence, with agreed licence conditions. Depending on the individual licence conditions agreed by JSW and PBS, there may be some difficulties in fully managing these given the stretched resources of JSW and key partner agencies such as housing, addictions services, and mental health services.

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159. One of the key aims of the provisions in the Bill relating to the postponement of community orders is to provide capacity for JSW services to focus on the supervision of individuals posing the greatest risk of harm and those released on licence. It is however impossible at this stage to comment on how much capacity will become available as a result of these measures.

160. The justice social work funding formula 2020-21 includes within its calculation £5,761,412 for Throughcare and Home Circumstance Reports (HCR) (combined), £204,996 for HDC and £47,389,585 which is under the Social and Economic Cost of Crime, which averages the cost of crime per area and funding is distributed accordingly. The workload statistics used in the funding formula are based on a three-year average and the costs attributable to Throughcare and HCR £1,563 and £77.59 for HDC in 2020-21 per case. The funding formula was adjusted to reflect a shift in cohort and places less dependency on workloads, as a main aspect of the calculation.

161. There will likely be additional costs arising from all of these measures and the impact of coronavirus, such as staff working overtime, staff being redeployed to other social work sectors. The recruitment of additional staff, and, should guidance on social distancing remain in place for a sustained period, local authorities may need to invest in additional means to ensure individuals are appropriately supervised, which may include greater use of technology. It is not possible to quantify any additional costs at present, given the significant uncertainties around how exactly how the measures will be used, what capacity will be available in social work (which is highly dependent on other factors such as pressure in non-justice areas and any changing guidance around social distancing), and the extent to which methods of supervision can be adapted.

Costs Associated with Local Authority Housing Services

162. While the housing situation of any group of released prisoners will vary, a substantial proportion of any group will require support from local authority housing offices, and in some cases from homelessness services. The delivery of such services is clearly affected by the restrictions on public-facing services, which are already under pressure to adjust to new working arrangements. SPS and Scottish Government have issued revised good practice guidance on how prison and local housing bodies can meet the needs of individuals upon release, but delivery will vary across different areas depending on local available resources and priorities.

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163. It is not possible to fully assess the capacity for housing and homelessness services to respond to a short-term surge in demand for support that would arise from a prison release process, without a specific proposals for the scale and lead time of the action. However, immediate concerns would be: to manage the additional workload placed on administrative and planning activities across housing providers and related services; and, the availability of appropriate accommodation in which to place individuals who require it. Depending on the scale of the increased demand, there may be resource implications for both aspects – and front-line services may look to local authorities, or to the Scottish Government, to provide additional funding to support this.

Even where an individual has the opportunity to return to previous accommodation (e.g. to family or friends), there will be an additional workload in terms of addressing any concerns over domestic abuse or child protection – which will need to be co-ordinated with the relevant services. There may also be a rise in secondary homelessness, where an individual cannot remain in the accommodation they intended (which may reflect the heightened tension amongst families and other households under the current restrictions, or the potential need for individuals to self-isolate).

Allow sheriffs and summary sheriffs to exercise Scotland-wide jurisdiction

164. It is not anticipated that the provision will have any financial impact on local authorities.

Suspension of statutory time limits

165. It is not anticipated that the provision will have any financial impact on local authorities.

Expansion of alternatives to prosecution options

166. It is not anticipated that this provision will have any financial impact on local authorities.

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Increasing discretion of court in relation to admissibility of hearsay statements

167. It is not anticipated that this provision will have any financial impact on local authorities.

Digital measures, including ‘electronic signatures, attendance by electronic means

168. The implementation of these measures is not expected to place any notable costs on local authorities.

169. Where expert witnesses, such as social workers or medical examiners, are called upon for remote attendance there will be a need to receive electronic communications under Section 1 (Enabling electronic signature and transmission of documents). This costs of meeting this provision are expected to be broadly cost neutral; professional staff are likely to have routine access to corporate IT from home, or in the workplace where deemed essential.

170. Where section 3 (Attendance by electronic means) is extended to the workforce in their capacity as expert witnesses, it is expected that the costs will be minimal. Licences for remote participation are likely to be serviced by the Scottish Courts and Tribunal Service (SCTS), with attendees being able to join using their own existing IT and internet connections. There may be some additional outlay for headsets and other equipment, such as monitors, that are necessary to take part in remote court proceedings if these are directed by the court.

Increase the availability of interim Legal Aid payments to solicitors and advocates

171. It is not anticipated that this provision will have any financial impact on local authorities.

Measures relating to community sentences

172. A duty will be placed on local authorities to contact individuals subject to community orders, informing them of any changes to their orders (in the first instance, that unpaid work time limits have been extended; and, should either of the two regulation-making powers be used, of any further changes). As local authority justice social work departments are already in contact with such individuals as a matter of course, the primary costs incurred will be related to identifying the relevant individuals, creating

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letters (or other means of communication), and sending these. These costs are not expected to be significant.

173. In addition, as with SCTS, there is likely to be some impact on justice social work services as a result of increased workload immediately after restrictions relating to the pandemic are lifted in having to deal with applications, hearings etc. associated with orders which have been suspended for a period of time in addition to those new orders being created once the courts have returned to normal operation. It is not possible to quantify the potential impact of this at present – particularly given uncertainty around whether and exactly how some of the powers in the proposal will be used (both in terms of the orders which may be postponed, and any alterations which may be made to the requirements in those in due course).

174. It should be noted that the Scottish Government has already committed to providing an additional £4 million to local authorities in 2020/21 for use in relation to justice social work.

Reduce face-to-face parole hearings

175. It is not anticipated there will be any additional costs associated with the Bill's provisions in regard to face-to-face parole hearings. Criminal Justice social workers would normally attend an oral hearing in person at the prison where the person is being detained. The provisions are designed to cut down on the number of oral hearings that will proceed and when it is considered that the interests of justice would be best served by having an oral hearing, then that would be undertaken by video or phone link rather than face-to-face. This would mean social workers could participate by live link. This may result in some modest savings incurred through travel and subsistence but it is not possible to calculate what these savings might be.

Children's hearings

176. Local authorities will need to provide some training on the changes set out in the Bill for professionals who may work with children supported by the children's hearings system. The provision of awareness raising material via CoSLA and Social Work Scotland as well as the Children's Hearings Improvement Partnership and the Youth Justice Improvement Board will be proportionate and effective in ensuring the necessary understanding of the impact of the Bill, and will incur marginal additional costs.

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FOI

Local authorities are similarly Scottish public authorities for the purposes of FOISA. For the reasons given in paragraph 3, the Scottish Government does not foresee any additional costs or savings arising for local authorities as a result of the changes proposed in this Bill.

Summary of estimated costs and savings to local authorities

	2020-21
Housing policy	£7.5 million
Community payback orders	Potentially significant costs to criminal justice social work due to reprofiling of work requiring additional resource
Early release for prisoners	A rapid increase in individuals leaving prison may also create significant resource demands on Local Authority Housing Services - with around 30% of leavers potentially needing assistance. It may also create a surge in the number of individuals eligible to seek throughcare support from their local authority, requiring significant resource in the short term.
Commercial leases	Some costs to Local Authorities due to deferral of rent payments. It is not possible to estimate the total costs of this measure.

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Children’s hearings	Marginal extra costs for provision of resources and training
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Costs on other bodies, individuals and businesses

177. Costs incurred by other bodies, individuals and businesses for each policy area set out in the Bill are included below, covering each policy area in the order in which they appear in the policy memorandum, as follows

- preventing evictions
- social security
- adults with incapacity
- commercial leases
- bankruptcy
- licensing
- local authorities
- planning
- land registration
- Business Improvement Districts
- Anatomy Act
- justice
- Children’s hearings
- Freedom of Information

Preventing Evictions

Social Rented Sector

178. In relation to Registered Social landlords (RSLs), costs will be similar to local authority landlords. For the majority of the grounds for repossession it is not expected that extending the notice a landlord must give the tenant will have a significant cost implication for landlords. However, for landlords seeking to repossess the property due to rent arrears or where the tenant is causing damage to the property, there are likely to be additional costs for landlords. Costs due to accumulated rent arrears are likely to be significantly higher for RSLs than local authority landlords because of the

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relative size of these organisations and their primary focus on housing. RSLs rely on rental income to fund the services they provide on a day to day basis. It is difficult on the available data to estimate the scale of these additional costs, and the Scottish Government has assumed that they will be comparable to the costs to local authorities.

179. In relation to social sector tenants, it is not expected that there will be any additional costs for tenants from extending the notice to leave period landlords must give a tenant when seeking to repossess the property. It is possible that delay in resolving outstanding arrears can lead to debt reaching a level which limits the tenant's capacity to deal with it.

180. In relation to contractors, RSLs employ contractors to carry out maintenance and other essential services which are funded out of rental income. Loss of rental income could potentially affect an RSL's capacity to contract work. However, it is considered that the amount of rent lost is not likely to have a significant effect on contracts and many programmes will, in any case, be delayed or postponed due to the coronavirus pandemic.

Private Rented Sector

181. In relation to private sector tenants, it is not anticipated that there will be any additional costs for tenants from extending the notice to leave period landlords must give a tenant when seeking to repossess the property.

182. In relation to private sector landlords, for the majority of the grounds for repossession, it is not expected that extending the notice a landlord must give the tenant will have a significant additional cost implication. However, for landlords seeking to repossess the property due to rent arrears or where the tenant is causing damage to the property, there are likely to be additional costs for landlords. These relate to loss of income from unpaid rent and increased repair costs to bring the property up to standard. Approximately 94% of registered landlords in Scotland have only one property and the average rent for a two bed property (the most common property size) is £668 a month (based on advertised rents). Therefore where a tenant was unable or did not pay rent for the extended period, a landlord in these circumstances would lose an additional £3,340 over the longer notice period.

183. In relation to letting agents, there may be costs implications for letting agents relating to additional administration costs (which will depend on the

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size and processes of individual agents) plus loss of income where a tenant is unable, or unwilling, to pay their rent. The management fees agents charge are usually based on a percentage of the monthly rent paid. However, it is considered that the financial support available to tenants should allow most tenants to continue paying rent and therefore helping to cover agents costs in the normal way.

184. In relation to contractors, landlords and letting agents employ contractors to carry out maintenance and other essential services which are usually funded out of rental income. Loss of rental income could potentially affect a landlord's capacity to contract work. However, it is considered that the financial support available to tenants should mean most tenants can pay their rent and that, in any case, routine work will be delayed or postponed due to the coronavirus pandemic.

Social Security

185. There will be no additional costs to other bodies, individuals and businesses as a result of the introduction of these provisions.

Adults with incapacity

186. There will be no additional costs to other bodies, individuals and businesses as a result of the introduction of these provisions.

Commercial leases

187. Many private sector commercial landlords are already putting similar measures into place in an effort to assist their tenants, mirroring what public bodies are doing. The Scottish Government is essentially extending the period of permissible rental deferral through the Bill. This aligns with representations made by the Scottish Property Federation who have indicated that landlords prefer this approach rather than rent holidays and rent-free periods as they may face penalties from their insurers. There may still be some landlords who will evict tenants for non-payment of rent and they could claim that they would have done so earlier in the absence of the Bill. The maximum difference would then be the loss of 12 weeks rental (14 weeks as proposed v existing 14 days). However, this would have to be balanced against the difficulty in finding a new tenant to occupy the property at all or at a much lower rental. It is considered that these would be very unusual and specific circumstances and so are impossible to quantify.

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Bankruptcy

188. Many creditors have already announced extended forbearance towards those unable to make repayments due to financial difficulties arising from coronavirus such as the availability of three month mortgage holidays. Creditors following best practice and Financial Conduct Authority requirements for treating customers fairly are unlikely to face significant costs. If individuals are unable to meet repayments, taking formal court action against them is likely both to be costly for creditors, and may force individuals into bankruptcy (from which creditor returns are very low)

189. There is also evidence that those accessing debt advice will in the longer term make higher repayments. Figures quoted in the HM Treasury impact assessment for the breathing space proposals suggest debtors who are advised to enter either a debt management plan or an individual voluntary arrangement (the Scottish equivalent of which is the Protected Trust Deed) repay their creditors an additional £3,500, whilst debtors who merely take advice repay their creditors an additional £858. Figures provided by the Improvement Service in Scotland suggest that for local authorities, every pound invested in providing debt advice generates a further £4 in recoveries to that local authority.

Licensing

190. Individuals and businesses who are users of the licensing system e.g. a person that owns a pub, a supermarket that sells alcohol etc. will benefit from the new flexibility and discretion that the provisions offer. In particular, they will benefit from flexibility arising in respect of meeting certain statutory requirements falling on them e.g. an extension to the period to undertake refresher training in respect of alcohol licensing, further time to arrange for a new premises manager if a previous manager is no longer undertaking the role etc.

191. Individuals and businesses will also benefit from Licensing Boards having new discretion and flexibility. This is because fewer individuals (and businesses who hold licences or have an interest in employees who hold licences) will lose their licences as a result of failing to be able to adhere to certain licensing rules than would be the case if no changes were being made.

192. As with estimating efficiencies for Licensing Boards, the extent of these efficiencies will depend on a variety of factors such as the way in which Boards decide to use the new flexibility and discretion the provisions

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provide and the number of licensing decisions, hearings etc. where the provisions may be relevant. It is not possible to quantify the extent of efficiencies for the reasons given above.

Local authorities

193. Excluding members of the public from local authority meetings on health grounds and relaxing an obligation of local authorities to provide extracts of hard copy documents in their offices is not expected to impose any additional costs on other public bodies.

194. There are not expected to be any substantial new costs to individuals or businesses, as most people access public documents online. It is possible that a small number of people may incur charges for internet usage if they have to view documents online rather than receive extracts of hard copy documents, should they request them in this manner.

Planning

195. Extending the duration of existing planning permissions will not incur any costs for applicants where the development is commenced within the 12-month period. It will provide savings where an applicant would otherwise need to apply to vary a condition in order to deal with delays caused by the coronavirus emergency.

Land registration

196. For customers submitting applications electronically, it is likely that the costs of scanning the applications for submission will be offset by the savings from not using a mail service.

Business Improvement Districts

197. There are no direct costs to other bodies, individuals and businesses through these provisions.

Anatomy Acts

198. There are no overall additional costs to other bodies, individuals and businesses through these provisions. These provisions affect work done by institutions such as universities. There may be marginal costs associated with retention of bodies and body parts beyond the usual deadlines, but this should be balanced against the pandemic preventing new bodies being donated. Institutions are already liable for cremation costs and the measures defer these costs.

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Justice

Conduct of trials on indictment

If there were to be no solemn trials throughout the COVID pandemic this could have a substantial financial impact on the criminal bar. The measures proposed in this Bill would enable some trials to go forward at an appropriate time which would lessen this financial impact.

Early release of some prisoners

Costs incurred by UK Government Departments

199. A high proportion of all prisoners will claim state benefits once they are released, and are more likely to be in severe poverty and reliant on benefits than the general population – including those that would be released from custody due to the commencement of the early prisoner release provisions within the Bill.

200. Prisoners who are in custody are not entitled to claim state benefits, and are not permitted to submit claims in advance of their release, although DWP will offer an advance of the individual's first payment if necessary. DWP staff have had to withdraw any prison-based staff for health protection reasons, removing their ability to offer preparatory support. Prisoners who have been serving sentences of several years are less likely to have received Universal Credit (UC) before, and will need help to transition from legacy benefits to the UC system – increasing the administrative burden for DWP. Therefore, there will be some financial impact on the DWP and HMRC associated with providing benefits (such as Universal Credit) to released individuals and the administration costs associated with this (such as assessing eligibility), at a time when the DWP system is under extreme pressure from the volume of new claims being made. However, it has not been possible to reasonably estimate the number of prisoners who would claim benefits in these circumstances.

Costs Associated with Third Sector Throughcare Support

201. The Scottish Government funds two national offender throughcare services ("New Routes" for male short-sentence prisoners, "Shine" for women prisoners), which offer prison leavers a flexible service starting whilst in custody, and continuing after release for around 6 months. These services are delivered by a network of third sector organisations, delivering

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a standardised process. The Scottish Government issues annual funding to these two services (plus two smaller, specialist services), at a total of £3.4 million per year. These services have previously supported c2,000 individuals per year. The cost of delivering this form of throughcare support varies substantially, depending on the circumstances of each individual. A basic unit cost would be around £2,200 per person, based on 6 months personalised support.

202. Eligible prisoners are approached by the service as they approach the end of their sentence, and asked if they wish to be supported by the service. Each service user is matched to a locally based, professional worker, who works with them to identify and address practical and personal problems that they face on release. These third sector services could potentially expand the scale of their operations to extend some form of support service to prisoners released at short notice. This would require an extension in their funding in order to provide an expanded service, as both services are working at full capacity. Depending on the content and volume of intervention being planned, there may be scope to develop a reduced service (at a reduced unit cost). The third sector services would need sufficient lead time to resource any increase in their caseload.

203. The delivery of this type of service is heavily impacted by coronavirus restrictions – with workers being unable to enter prisons, and unable to meet their service users in person in the community. The services are currently reshaping their services to maximise phone, text and email contact, and reduce any personal contact to emergency cases only.

Allow sheriffs and summary sheriffs to exercise Scotland-wide jurisdiction

204. It is not anticipated that this provision will have any financial impact on other bodies, individuals and businesses.

Suspension of statutory time limits

205. It is not anticipated that this provision will have any financial impact on other bodies, individuals and businesses.

Expansion of alternatives to prosecution options

206. The increase in the maximum fiscal fine that COPFS can offer as an alternative to prosecute will have a financial impact on those who choose to pay the fine rather than being prosecuted in the courts. Other than that, the

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Scottish Government does not consider this measure will have any impact on other bodies, individuals or businesses.

Increasing discretion of court in relation to admissibility of hearsay statements

207. It is not anticipated that this provision will have any financial impact on other bodies, individuals and businesses.

Digital measures, including electronic signatures, attendance by electronic means

208. It is not anticipated this provision will have any financial impact on other bodies, individuals and businesses.

Increase the availability of interim Legal Aid payments to solicitors and advocates

209. It is not anticipated that this provision will have any financial impact on other bodies, individuals and businesses.

Measures relating to community sentences

210. As with the potential impact identified in relation to SCTS, there is a possibility of increased workload immediately post-crisis for organisations linked to the delivery and oversight of community orders, including third sector bodies. It is not possible to quantify this at present.

Reduce face-to-face parole hearings

211. These measures have an impact on the Parole Board for Scotland. The Parole Board has an annual budget of £2,503,000 and the actual spend on Parole Board Part IV hearings (Tribunals) in 2019-20 to end of February is £2,300,000.

212. There are modest costs associated with members of the Board working remotely in terms of additional equipment which has had to be purchased to allow them to work effectively. This amounts to around £8,000 one-off cost and covers monitors, headsets and increased data usage on phones/Wi-Fi.

213. There is also the risk that the Case Management System (CMS), which holds all of the records relating to prisoners to enable a hearing to take place, may fail and require technical support to fix. As the work is all

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paperless the CMS is the only means of accessing those records so it would be vital that it was recovered asap. If Scottish Government IT support was not possible a private operator would have to be called in. It is not possible to estimate how much that would cost.

214. There were 1031 tribunal hearings scheduled to the end of 2019-20. The Bill's provisions relax the Rules to allow the Board to decide for Part IV cases (Tribunal hearings) that an oral hearing is not necessary where the interest of justice do not require it. This will allow them the same flexibility they have for Part III (Casework) hearings already. The provisions also make clear that the entirety of the proceedings of the Board, and not just evidence gathering by the Board, can be carried out by audio-visual link or by phone. With a potential reduction in the number of oral hearings there is the possibility that the Parole Board may make savings over the lifetime of the Bill as follows:

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Reduction	10%	20%	30%	40%	50%
No. of cases 6m	51	103	154	206	262
Savings 6m	£51,000	£103,000	£154,000	£206,000	£262,000
No. of cases 12m	103	206	309	412	515
Savings 12m	£103,000	£206,000	£309,000	£412,000	£515,000
No. of cases 18m	153	309	462	618	786
Savings 18m	£153,000	£309,000	£462,000	£618,000	£786,000

¹⁰

Children's hearings

Scottish Children's Reporter Administration (SCRA)

215. The largest direct cost for SCRA is additional ICT licences supporting secure transmission of electronic information, estimated at £10k. This will be covered under SCRA's existing grant-in-aid for 2020/21 of £25.16

¹⁰ Figures based on an annual number of cases of 1031 taken from 2019-20 actual numbers of oral hearings that have taken place and are scheduled to take place at a cost per hearing of £1,000 per sitting.

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million by the body recycling savings secured under deleted or deferred children's hearings business.

Children's Hearings Scotland (CHS)

216. There are some limited additional costs for CHS – assessed by the body at £11k - relating to updated communications with children's panel members and Area Support Team volunteers on the Bill's proposed changes to hearings composition and scheduling. All CHS volunteers have access to electronically-supported training resources through their dedicated Learning Academy and to practice and panel materials via recently-introduced and universally-available IT tools. CHS will cover these updates without any additional resource being required over and above their annual £4.6 million grant-in-aid from the Scottish Government.

FOI

217. The bodies, persons and officeholders listed in schedule 1 or designated in an order made under section 5(1) of FOISA, and the publicly-owned companies (within the meaning of section 6) are all Scottish public authorities for the purposes of FOISA. Again, for the reasons given in paragraph 3, the Scottish Government does not foresee any additional costs or savings arising for other Scottish public authorities as a result of the changes proposed in this Bill.

218. The Scottish Information Commissioner has responsibility for enforcing compliance with FOISA. This includes dealing with appeals from applicants who are dissatisfied with the way a Scottish public authority has dealt with a request for information. The Bill confers a new power on authorities to extend the relevant period for dealing with a request or a review. This may accordingly result in additional appeals to the Commissioner. However, the power to extend the relevant period can only be exercised in limited circumstances where 60 working days (or 12 weeks) is insufficient to respond, either because of the volume and complexity of the information requested or because of the overall volume of requests being dealt with by the authority. It is therefore expected that it will be exercised sparingly.

219. The number of appeals received by the Commissioner tends to fluctuate in any given year: the most recent annual report indicates that 560

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appeals were received in 2018/19, 507 in 2017/18, and 425 in 2016/17¹¹. In each year, this represents between 0.6% and 0.7% of the total number of requests for information made across Scotland.

220. On balance, it is assumed that the new power for authorities to extend time periods is unlikely to generate a significant number of additional appeals to the Commissioner.

221. The Commissioner may issue guidance to authorities and requesters about the proposed changes in the Bill. Indeed, the Commissioner has already issued guidance about the impact of coronavirus. The Scottish Government takes the view that issuing guidance in this way is part of the general functions of the Commissioner (as set out in section 4 of FOISA) and that the Commissioner would periodically issue new guidance when required in any event.

222. Accordingly, it is not expected that there will be any additional costs or savings arising for the Scottish Information Commissioner as a result of the changes proposed in this Bill.

¹¹ Scottish Information Commissioner – Annual Report and Accounts 2018/19, p 24: accessible at <http://itspublicknowledge.info/home/SICReports/AnnualReports.aspx>

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Summary of estimated costs and savings to other bodies, individuals and businesses

	2020-2021
Registered Social Landlords	£7½ m
Social Tenants	Nil
Contractors	Nil
Tenants	Nil
Landlords	Average additional cost to individual landlord seeking to repossess the property due to rent arrears £3,340
Letting agents	It has not been possible to estimate the potential additional costs to agents in the time available.
Contractors	Minimal
DWP	Some costs to DWP as a result of increased benefit claims
Third Sector throughcare services	Some increased costs due to increased demand
Third sector	Some costs to Third Sector due to reprofiling of work requiring additional resource
Parole Board	Minor cost (£8k) to Parole Board likely offset by potential for savings/efficiencies of

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	£0.05m to £0.79m associated with potential reduction in the number of oral hearings
Individuals and businesses	Some costs to individuals or businesses as a result of paying larger fines .
Defence solicitors	Some re-profiling of incomes leading to earlier payments to defence solicitors, but cost neutral in medium term.
Scottish Children’s Reporter Administration (SCRA)	Additional ICT licences supporting secure transmission of electronic information, estimated at £10k
Children’s Hearings Scotland (CHS)	Some limited additional costs for CHS – assessed by the body at £11k - relating to updated communications with children’s panel members and Area Support Team volunteers on the Bill’s proposed changes to hearings composition and scheduling

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Coronavirus (Scotland) Bill

Financial Memorandum

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