

Domestic Abuse (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 Domestic Abuse (Scotland) Bill, introduced in the Scottish Parliament on 17 March 2017.
2. The following other accompanying documents are published separately:
 - statements on legislative competence by the Presiding Officer and the Cabinet Secretary for Justice (Michael Matheson MSP) (SP Bill 8–LC);
 - Explanatory Notes (SP Bill 8–EN);
 - a Policy Memorandum (SP Bill 8–PM).
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament. The Policy Memorandum explains in detail the background to the Bill and the policy intention behind the Bill.

The Bill

4. The Domestic Abuse (Scotland) Bill (“the Bill”) will improve how the justice system responds to domestic abuse by creating a specific offence of domestic abuse and making a number of associated changes to criminal procedure, evidence and sentencing in domestic abuse cases.
5. There is flexibility to respond to changes in legislation as part of the normal ebbs and flows in the use of resources in the justice system. However, the flexibilities available clearly have limits and each change in legislation must always be considered within the constraints existing at the time legislative change takes effect. Some of the impact of the Bill's

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provisions will build up over time and criminal justice system agencies will require the Scottish Government to ensure the overall pressures arising from the Bill's provisions, and other legislative reforms, are accounted for through future justice spending review settlements.

Sections 1-10 - offence as to domestic abuse

Costs on the Scottish administration

6. These provisions create a new offence of domestic abuse. The key factor which will determine the cost implications will be the number of investigations, prosecutions and disposals arising directly as a result of the new offence.

7. In assessing the direct impact of the creation of the new offence, it is important to bear in mind that a significant number of criminal cases which relate to domestic abuse are already prosecuted in Scottish courts using existing laws. The new offence relates to a course of conduct which can be committed in various ways including through conduct that is already criminal e.g. assault. The new offence however can also be committed through conduct which either may not be criminal under existing laws or conduct which either cannot be or, at the very least, is extremely challenging to prosecute using existing laws.

8. With this in mind, it is likely that a majority of the cases that may be investigated by Police Scotland and reported to the Crown Office and Procurator Fiscal Service (COPFS) for consideration of prosecution using the new offence will be cases that are already dealt with under existing laws.

9. However, it is also evident that there will be a number of new cases, i.e. cases that previously would not have come to the attention of the police or COPFS and this will have a financial impact.

10. In addition, it is also considered that in some cases which already are investigated and prosecuted under existing laws, a wider range of conduct will be able to be included within the charge as a result of the new offence. For example, there will be current cases which are investigated and prosecuted as single incidents of, say, assault or threatening or abusive behaviour which will in future be able to be prosecuted under the new offence as a course of conduct involving both physical and/or psychological abuse.

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11. It is considered that an increase in costs will occur following the introduction of the new offence. This view is based on a number of factors.

12. Firstly, increased awareness of domestic abuse as a result of the creation of the new offence may lead to higher levels of reporting of these crimes to the police than otherwise would be the case. This may relate to conduct that is already criminal under existing laws, but the higher levels of awareness generated by the creation of this new offence of the criminal justice system's ability to effectively deal with domestic abuse will encourage more people to come forward and report cases in a way that they would not have done previously even where the conduct amounting to the abuse was already capable of being prosecuted using existing laws e.g. physical abuse.

13. Secondly, as the offence enables the prosecution of psychological abuse (where this forms part of a course of conduct), which either cannot or, at the very least, cannot easily be prosecuted under existing criminal laws, it is also likely that there will be cases reported for prosecution which are not reported at present as it is not considered a crime has been committed. This will include incidents that are not currently reported to the police at all and also incidents which are attended by the police but where no crime is recorded and so no report is ever made to COPFS.

14. Thirdly, it is considered there will be an effect on existing cases in terms of the forum of prosecution. In particular, a number of cases which are currently prosecuted in the summary courts as, for example, single incidents of threatening or abusive behaviour or common law assault will, when considered alongside any psychological abuse that is also evidenced, may be regarded as sufficiently serious when considered as a course of conduct using the new offence that COPFS elect to prosecute them in a solemn court.

15. Fourthly, there will also be additional costs which arise as a consequence of the likely increased complexity of a case where a decision is made to use the new offence to libel psychological abuse as well as conduct which could currently be prosecuted using an existing offence.

16. Fifthly, there will be training costs associated with preparing the introduction of the new offence.

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17. Estimates for the extent of each of these costs are set out below. In summary, new costs will arise from the following factors:

- an increase in reports from:
 - general increased awareness of what constitutes domestic abuse leading to an increase in reports being made to the police; and
 - the new offence explicitly providing for the prosecution of psychological abuse where this forms part of a course of conduct, which cannot or, at least, cannot easily be prosecuted under existing laws, leading to an increase in the number of investigations and prosecutions;
- the availability of the new offence making it possible to better identify and prosecute the totality of abuse, resulting in some cases amounting to a serious course of conduct being prosecuted in a higher level of court;
- some cases becoming more complex to prosecute as they involve psychological abuse; and
- training for the introduction of the new offence.

Methodology applied in developing estimates

18. When prosecuting cases currently, COPFS can add what is called a “domestic abuse marker” to IT records to identify a case as being a domestic abuse case. This is done so statistics can be collected on the extent of domestic abuse cases being dealt with within our criminal courts.

19. This data has been used to develop estimates for the impact of the new domestic abuse offence. In addition, COPFS have their own internal records of cases marked for prosecution in each year with the domestic abuse marker. Where it is considered appropriate, these figures have been used.

Increase in reports

20. The Scottish Criminal Proceedings database shows that in 2014/15, 15,619 people were proceeded against for an offence with a domestic abuse marker. It is likely that, had the new offence been in force in 2014/15, some of the 15,619 people proceeded against for various offences with a domestic abuse marker would instead have been charged with the offence of domestic abuse. There are various reasons why not all

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such cases would have been prosecuted using the new offence, including that the new offence requires a course of conduct and this will clearly not always arise in cases involving domestic abuse (existing laws can of course continue to be used to prosecute single incidents of (physical) domestic abuse).

21. Statistics collected by Police Scotland indicate that just under half of all “domestic abuse incidents” recorded by them in 2015/16 did not result in the recording of a crime. In part, this reflects the approach taken by Police Scotland in recording domestic abuse incidents in line with the following recording standard:

“...Any form of physical, sexual or mental and emotional abuse [that] might amount to criminal conduct and which takes place within the context of a relationship”¹.

22. It is expected that these figures will include incidents where a crime is not recorded as the recording standard specially includes incidents that “might” amount to criminal conduct as well as incidents that do amount to criminal conduct.

23. In some of these incidents which are recorded as a domestic abuse incident but where a crime is not currently recorded, the situation will likely change once the new offence is introduced as there will now be evidence of conduct in some cases which could be charged using the new offence, either in isolation, or taken together with other information known to the police.

24. Police Scotland statistics show that in 2015/16, the police dealt with 28,198 domestic abuse incidents that did not lead to the recording of a crime. Sometimes, this will be because there is insufficient evidence that any crime was committed (e.g. because neighbours report a disturbance but on attending the incident, the police do not find evidence that it amounted to a crime). However, and as noted above, it is anticipated that a small proportion of the incidents which the police are called to and currently do not record a crime will result in a crime being recorded once the new offence is in force.

¹ <http://www.gov.scot/Publications/2016/10/2442/334220>

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25. Furthermore, the Scottish Government is aware that domestic abuse is currently under-reported. The 2014/15 Scottish Crime and Justice Survey found that only one in five (19.5%) victims of partner abuse in the last 12 months said that the police came to know about the most recent (or only) incident², with just over one in ten victims (11.6%) reporting the incident to the police themselves. However the SCJS estimates that almost two-thirds of victims in the previous 12 months told at least one person or organisation (such as friends, relatives, a doctor) about their most recent experience.

26. It is therefore anticipated that the introduction of an offence which reforms the criminal law to better reflect victims' experience of domestic abuse, and the increased public awareness of the issue resulting from it, will encourage some victims to come forward to the police where previously they would not have done so.

27. It is difficult to estimate precisely what the combined effect of increased public awareness of domestic abuse, in particular of tactics of coercive control and psychological abuse, and the extension of the criminal law to cover forms of psychological abuse will have on the number of domestic abuse cases reported by the police for consideration of prosecution.

28. When the UK Government introduced the offence of "controlling or coercive behaviour in an intimate or family relationship"³, the impact assessment it produced estimated that the introduction of the offence would result in an increase in reporting of domestic abuse of 6%⁴.

29. This estimate was based on responses received to their consultation seeking views on the creation of an offence of coercive control. While the new offence in this Bill is not directly comparable with the offence introduced in England and Wales (the new offence contained in the Bill is wider than the Serious Crime Act 2015 offence in that it includes a more extensive range of types of abuse within it, but it is also narrower in

² <http://www.gov.scot/Publications/2016/05/2505/6>

³ [Section 76 of the Serious Crime Act 2015](#)

⁴See

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/393814/Impact_Assessment_-_Strengthening_the_Law_on_Domestic_Abuse.pdf

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covering only partners and ex-partners, and not abuse between people in other familial relationships), it is considered that a 6% increase in reported cases, comprising both incidents which are not currently reported to the police, and incidents reported to the police where no crime is currently recorded, is an appropriate central estimate of the impact of the new offence.

30. However, it is considered there is a relatively high level of uncertainty in terms of providing an exact estimate of costs and so the memorandum also sets out the impact of a 2% increase (a low estimate) and a 10% increase (a high estimate) in reporting of domestic abuse cases.

	2014/15	Impact (6% increase in reporting)	Increase on 2014/15
A. Domestic abuse <i>charges</i> reported by police to COPFS	36,667	38,867 ⁵	+ 2,200 charges
B. Domestic abuse <i>cases</i> marked and prepared for prosecution*	19,633	20,811 ⁶	+ 1,178 cases

*This includes cases where one or more charges are prosecuted at the same time.

31. The figures above indicate that a 6% increase in reporting of domestic abuse would lead to COPFS marking for prosecution an additional **1,178 cases** involving domestic abuse. This will include both cases charged using the new domestic abuse offence and offences prosecuted using existing criminal offences.

32. Correspondingly, a 2% increase in reporting (lower estimate) would result in COPFS marking for prosecution an additional **393 cases**, and a 10% increase (upper estimate) would result in COPFS marking for prosecution an additional **1,963 cases**.

⁵ Assuming, based on 2014/15 figures that one domestic abuse incident in which a crime is recorded = 1.13 charges reported to COPFS

⁶ Assuming, based on 2014/15 figures – 1 domestic abuse case =1.6 charges (i.e. that an individual perpetrator is on average charged with 1.6 offences).

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33. It should be noted that there is a difference between the number of domestic abuse cases COPFS record as having been marked and prepared for prosecution (19,633), and the official Scottish Government Criminal Proceedings statistics showing the number of people prosecuted for offences with a domestic abuse marker in the Scottish courts (15,619). There are a number of reasons for this.

34. The Criminal Proceedings figures relate to cases concluded in 2014-15 while the COPFS figures relate to cases reported in 2014-15 (a case may be reported in one year, but concluded in the next year). More significantly, the Criminal Proceedings figures relate to people who have a court verdict recorded against them, while the COPFS figures include all those cases which are initially marked for court and this will include some cases which will subsequently be marked for no further action.

35. For the purpose of estimating the cost to COPFS of the new offence, it is considered appropriate use COPFS figures, which include cases where a decision is taken for no further action following consideration of the evidence. It is considered appropriate to use this wider figure as the cases where no further action is taken can often involve complicated and sensitive investigations and require a significant amount of preparation and resource from COPFS before a decision is taken to take no further action.

Costs on the Scottish Courts and Tribunals Service and Scottish Legal Aid Board

36. However, for the purpose of estimating the cost on Scottish Courts and Tribunals Service (SCTS) and Scottish Legal Aid Board (SLAB), the Scottish Government Criminal Proceedings data for 2014/15 has been used, which reflects the number of actual cases concluded in the courts each year with a domestic abuse marker:

	2014/15 figures	Additional cases arising from 2% increase in reporting	Additional cases arising from 6% increase in reporting	Additional cases arising from 10% increase in reporting
Cases marked for	19,633	393	1,178	1,963

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prosecution by COPFS				
Number of prosecutions concluding in court	15,619	312	937	1,562
Additional convictions (assuming 70% conviction rate⁷)	12,432	218	656	1,093

37. The cost to the criminal justice system of processing these additional cases will be dependent on the level of court (the “forum”) in which these cases are tried.

38. The Scottish Government publication “Costs of the Criminal Justice System in Scotland 2014/15”⁸ estimates that the average cost of criminal cases in different levels of court. The table below sets out these costs:

	High Court Case	Sheriff Solemn Court Case	Sheriff Summary Court Case
Cost to COPFS	£58,546	£4,473	£379
Cost to SCTS	£9,638	£1,856	£385
Cost to SLAB	£13,545	£1,852	£600
Total Costs	£81,729	£8,181	£1,364

⁷ See paragraph 49 for discussion of the conviction rate.

⁸ See <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>

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39. For the purpose of estimating the cost of these projected additional cases, it has been assumed that the cases will be heard in the same forum as existing domestic abuse cases.

Costs on COPFS

40. For the purpose of estimating costs for COPFS of cases which are marked and prepared for prosecution, the Scottish Government has used data provided by COPFS regarding the forum in which cases with a domestic abuse marker were tried in 2014/15.

41. This shows that 94.6% of cases were marked for trial in the summary courts, 4.0% were marked for trial in the Sheriff court on indictment and 0.9% were marked for trial in the High Court (with the remaining 0.5% tried before a jury but were not accurately categorised as High Court or sheriff solemn court on COPFS systems).⁹

42. For the purpose of estimating the cost to SCTS and SLAB, information contained in the Scottish Criminal Proceedings Database regarding cases tried in 2014/15 has been used to estimate the proportion of cases tried in each forum. This shows that 96.6% of cases were tried in the summary courts, 2.5% were tried in the Sheriff court on indictment and 0.8% were tried in the High Court.

43. As noted above at paragraph 35 for the purpose of estimating the costs to COPFS, it is considered appropriate to use its figures on the proportion of cases marked to be tried in each forum to estimate costs they will incur. However, for the purpose of estimating costs to SLAB and SCTS, it is considered that data on cases which go to trial clearly provide a more accurate basis upon which to estimate likely costs.

44. The Scottish Government has estimated the total cost of a 6% increase in cases to COPFS, SCTS and SLAB as follows:

	High Court	Sheriff solemn	Sheriff summary	Total

⁹ For the purpose of the estimate below, we have split these cases as per the approximately 20% High Court, 80% Sheriff solemn that is recorded for cases where the forum is known.

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Cost to COPFS of 1,178 cases marked for prosecution	12 x £58,546 = £702,552	52 x £4,473 = £232,596	1,114 x £379 = £422,206	£1,357,354
Cost to SCTS of 937 cases prosecuted	8 x £9,638 = £77,104	24 x £1,856 = £44,544	905 x £385 = £348,425	£470,073
Cost to SLAB of 937 cases prosecuted	8 x £13,545 = £108,360	24 x £1,852 = £44,448	905 x £600 = £543,000	£695,808
				Total = £2,523,235

45. This shows that the total costs to COPFS, SCTS and SLAB of a 6% increase in cases reported for prosecution is **£2,523,235**.

46. Using the same methodology, the cost of a 2% increase (lower estimate) in the number of cases reported for prosecution would be **£841,078** while the cost of a 10% increase (upper estimate) in the number of cases reported for prosecution would be **£4,205,392**.

Costs on the Scottish Prison Service

47. In terms of sentencing, in 2014-15, 80% of cases prosecuted in the courts in Scotland with a domestic abuse marker resulted in a conviction. However, it is considered it is likely that it will be slightly more challenging to secure convictions for the new offence than the current profile of cases with a domestic abuse marker. This relates to the operation of the new offence which requires three separate conditions to be met before the offence can be said to have been committed including, for some cases, proving a specific effect or effects in relation to the partner subject to the abuse. For the new offence therefore, it has been assumed that 70% of the additional prosecutions resulting from the creation of the new offence will result in conviction.

48. Using this approach, it is estimated that there would be 656 additional convictions resulting from 937 additional domestic abuse cases each year.

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49. In 2014-15, 12,432 people were convicted of offences where a domestic abuse marker was recorded. Of these, 1,560 (12.5%) resulted in a custodial sentence, with the average length of sentence being 257 days, 3,512 (28.2% were given a community sentence), 3,121 (25.1%) resulted in a financial penalty, and the remaining 4,239 (34.1%) were given another form of non-custodial disposal, including admonishment.

50. Applying the breakdown of disposals from existing offences associated with domestic abuse to the new offence would result in the following disposals being imposed: 82 custodial sentences of average length 257 days; 185 community penalties; 165 financial penalties; and 224 other non-custodial disposals.

	Custodial sentence	Community sentence	Financial Penalty	Other non-custodial disposal
Percentage of cases in which penalty imposed in 2014/15	12.5%	28.2%	25.1%	34.1%
Number of additional penalties arising	82	185	165	224

51. Under existing prisoner early release rules, offenders receiving an average sentence of 257 days will, under rules governing early release from short-term sentences, be released after serving half their sentence in custody.

52. The Scottish Prison Service's Annual Report and Account 2015/16¹⁰ states that the "unit cost" of a prison place in 2015/16 was £37,331. The estimated annual cost in terms of prison places arising from a 6% rise in

¹⁰ <http://www.sps.gov.uk/Corporate/Publications/Publication-4206.aspx>

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cases reported for prosecution is therefore estimated at £37,331 x (0.5 x 257/365) x 82 = **£1,077,690**.

53. Using the same methodology, a 2% increase (lower estimate) in cases reported for prosecution is estimated to cost **£359,230** in respect of prison places and a 10% increase (upper estimate) in cases reported for prosecution would cost **£1,796,150** in respect of prison places.

Costs on Police Scotland

54. An increase in the number of domestic abuse incidents reported to the police will also have cost implications for Police Scotland.

55. Police Scotland have estimated what these costs will be, based on the time taken from officers to respond to a domestic abuse incident, which has been calculated based on the time taken from officers marking themselves “at scene” to “leaving scene” when responding to a domestic abuse incident.

	2% increase in domestic abuse incidents	6% increase in domestic abuse incidents	10% increase in domestic abuse incidents
Extra hours generated by increased domestic abuse incidents reported to police	5,365 hours	16,095 hours	26,825 hours
Cost (based on 2 constables attending these incidents)*	£240,137	£720,412	£1,200,687

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*The average hourly cost of a constable is £22.38

56. Police Scotland noted that it is likely that an increase in the number of domestic abuse-related cases being reported to them may result in other costs arising from, for example, the detention and arrest of suspects, appearances at court and the involvement of other officers at high ranks. For example, there are supervisory officer responsibilities in response to domestic abuse incidents which include participation in the decision making process and Risk and Concern Hub staff, who assess risk and share information with relevant partners. However, Police Scotland did not consider it possible to quantify the cost implications of these factors. The estimated costs above should therefore be regarded as a minimum projected cost for Police Scotland.

Ability to better identify and prosecute the totality of abuse resulting in some cases being prosecuted in a higher level of court

57. It is likely that the creation of a specific offence of domestic abuse will result in some cases which are currently reported to COPFS and which are prosecuted in a sheriff summary court being, in the future, prosecuted in a sheriff solemn court. This is likely to occur in cases in which the fact that it is possible to libel offending behaviour relating to patterns of psychological abuse mean that the alleged offence committed by the accused becomes sufficiently serious to justify trial in a higher level of court.

58. It is challenging to estimate with any degree of certainty how many cases would be affected in this way.

59. However, in recent years, COPFS have carried out two case review exercises seeking to determine how the cases reported to COPFS fit within Michael Johnson's typology of domestic abuse¹¹. This typology recognises three broad categories of domestic abuse: situational couple violence – comprising incidents of conflict provoked by situational factors; intimate terrorism – sometimes referred to as “coercive control” and comprising a pattern of controlling behaviours and tactics designed to dominate and

¹¹ https://en.wikipedia.org/wiki/Intimate_partner_violence#Types

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control; and violent resistance – where victims of intimate terrorism respond with violence to the abuse and control they are subjected to.

60. These reviews found that a minimum of 23% of domestic abuse cases reported to COPFS were identified as “intimate terrorism”. However, those case review exercises concluded that there were significant challenges in confidently being able to categorise cases in terms of this typology. Caution must therefore be applied when using this figure given the size and inherent limitations of the exercise and given the significant number of cases which could not be categorised. COPFS consider that 23% is therefore a potentially conservative estimate.

61. While there is not an exact match between cases which have been identified as constituting “intimate terrorism” in the case review exercises and the terms of the new domestic abuse offence, COPFS consider it to be the most accurate measure available by which it can be estimated how many existing cases might involve patterns of psychological abuse and coercive control which can be prosecuted using the new offence.

62. COPFS figures show there were 18,581 cases with a domestic abuse marker which were marked for prosecution in the summary courts in 2014/15. Applying the figures from the case review exercises, this would suggest that 4,274 of these cases involved patterns of abuse of the kind that Michael Johnson categorises as “intimate terrorism”. Many of these cases would continue to be prosecuted in a summary court, but it is appropriate to estimate that some will be prosecuted in the future in a higher level of court.

63. If 5% of these specific cases involving “intimate terrorism” are elevated from sheriff summary to sheriff solemn for prosecution, this would represent 214 cases being heard in a higher level of court.

64. The difference in the average unit cost between a sheriff summary prosecution and a sheriff solemn prosecution is £6,874. The increase in cost to COPFS, SCTS and SLAB of these 214 cases is **£1,471,036**.

65. It is reasonable to assume that a similar proportion of cases currently tried in the sheriff court may be tried in the High Court as a consequence of the ability to libel a whole course of conduct which the accused is alleged to have committed. COPFS figures show that 782 domestic abuse cases

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were tried in the sheriff solemn courts in 2014/15. If 23% of those involved “intimate terrorism” and 5% of those cases are elevated from sheriff solemn to the High Court for prosecution, this would represent an additional nine cases being heard in the High Court each year.

66. The difference in the average unit cost between a sheriff solemn prosecution and a High Court prosecution is £73,548. The increase in cost to COPFS, SCTS and SLAB of these nine cases is **£661,932**. The total estimated additional annual cost arising from cases being tried in a higher forum than would otherwise have been the case is therefore **£2,132,968**.

Some cases becoming more complex to prosecute as they involve psychological abuse

67. If it is assumed that the 95% of the existing summary cases which COPFS have identified as involving “intimate terrorism” continue to be prosecuted in the summary courts, it is nonetheless likely that the complexity of those prosecutions will increase if they are prosecuted using the new offence. There may be increased costs arising from factors such as the requirement for more detailed preparation, costs related to citing additional witnesses and generally lengthier trials as the nature of proving the conduct amounting to the offence becomes, on average, more challenging.

68. This would potentially affect 4,060¹² cases, although in practice, COPFS consider it unlikely that they would libel the new offence in every summary case that they have categorised as “intimate terrorism”.

69. However, COPFS estimate that, in the round, the increased complexity resulting from prosecuting a “course of conduct” case would result in an average increase of 5% in the cost of prosecuting these cases. If it is assumed that there will be increases of a similar size in the cost of such cases for SCTS and SLAB costs, this means there would be an increase in the cost of these cases of £68.20 per case, resulting in an additional cost of **£276,892** each year.

¹² That is 23% of all summary domestic abuse cases less the 214 which it is projected would instead be prosecuted on indictment.

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Aggravation in relation to a child

70. Section 4 of the Bill creates a statutory aggravation to the offence that, in committing the offence, the perpetrator directed behaviour at a child or directed behaviour at the victim with the assistance of a child and require courts to take account of that fact in sentencing the offender.

71. The statutory aggravation will formally require the court to consider whether a more severe sentence is required in any given case. The aggravation does not increase the maximum sentence available and this, coupled with the fact that the courts are already likely to be considering all the facts and circumstances of each case before them in deciding the appropriate sentence means that it is unlikely that new costs will arise.

72. However, SCTS consider that the requirement to state and record the extent of, and reasons for, any difference in sentence as a result of the aggravation in each case where the aggravation is proven will result in additional costs of around **£28,000** each year for SCTS (or **£26,930** if there is a 2% rise in the number of cases, and **£29,100** if there is a 10% rise in the number of cases).

73. Court minutes will require to record the matters specified in clause 4(4) including any difference in sentence, which will require an update to SCTS' IT systems to ensure that the child aggravation and any difference in sentence is recorded. SCTS estimate that the cost of making such a change to their system will be around **£25,000**.

Training for the introduction of the new offence

74. There will also be a requirement for COPFS and Police Scotland to provide training on the new offence.

75. COPFS estimate that the cost of designing and delivering training to its staff on the terms and implementation of the new offence will be **£45,874**. The figure includes:

- development of a two hour face-to-face session, including an input devised and developed by an external agency with expertise in providing training on domestic abuse, to be delivered by legal staff in local offices, including 'train the trainer' sessions;
- delivery of the above sessions including the cost of covering legal staff while they are attending the training; and

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- development of an e-learning package.

76. Police Scotland estimate that the cost of training staff on the new offence will be **£441,928**, based on figures provided by SafeLives/College of Policing for Coercive Control training they delivered to Police Forces in England and Wales. This figure consists of:

- first responder one-day training for 8,364 frontline officers (up to and including the rank of Inspector) at £52 per learner, per day = **£434,928**;
- 'Train the trainers' event = **£2,950**;
- two day 'health check' of a police area to assess how well equipped the force are to deal with domestic abuse and to support the implementation of the learning and practice derived from the classroom-based training **£3,500**.

Costs on local authorities

77. The "2014/15 Cost of the Criminal Justice System"¹³ publication estimates that the average cost of a community sentence such as the community payback order is £2,259. In 2014/15, 28.2% offenders convicted of an offence with a domestic abuse marker received a community penalty. Using the central estimate of an additional 656 convictions, the new offence is estimated to give rise to an additional 185 offenders receiving community penalties, resulting in additional costs of **£417,915**.

78. For the lower (2% increase) and upper (10% increase) estimates, this would equate to costs between **£139,305** and **£696,525**.

Costs on other bodies, individuals and businesses

79. It is not anticipated that there will be any new costs falling on other bodies, individuals or businesses as a result of the new offence.

¹³ <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>

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Schedule 1(1) – bail condition concerning precognition

Costs on the Scottish administration

80. This provision adds a new standard bail condition for any person accused of a domestic abuse offence (either the new offence in this Bill or an offence where the domestic abuse aggravation in section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (“the 2016 Act”) has been libelled).

81. This new bail condition prohibits the accused from directly undertaking a precognition or asking questions of the complainer with instead any precognition/questioning having to be undertaken by a solicitor.

82. In 2014/15, there were 15,619 cases prosecuted with a domestic abuse marker. Using the central estimate of an increase in 6% in cases following the introduction of the new offence, this amounts to 16,556 cases where the new condition will operate.

83. Not all of these cases will require imposition of the new bail condition. Clearly, those where the accused is cited to appear, or remanded, will not.

84. Costs arise for the SCTS in terms of amendment of its IT to include the new condition, and costs of the time of court officials (and use of the courts themselves) involved in explaining the new condition to the accused affected by it (under the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), there is a requirement for the court to explain what bail conditions have been imposed in ordinary wording). There may also be some costs arising from precognitions etc. being undertaken by a solicitor rather than by the accused.

85. For offences with a domestic abuse marker, where the accused is released on bail, the court would have to explain the new standard bail condition in each of those cases. On the assumption that in 6,248 cases (40%) of the 15,619 cases prosecuted with the domestic abuse marker the accused were released on bail, the SCTS has estimated that this would result in additional costs of **£45,000** per annum in respect of additional court time.

86. Factoring in the percentage increase of 6 per cent this would result in additional costs to SCTS of approximately **£3,000** per annum. An increase

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of 2% would lead to additional costs of **£1,000**, and an increase of 10% to additional costs of **£5,000**.

87. Costs for the SLAB will be minimal. Very few individuals conduct their own defence: if a solicitor is undertaking the case he or she will wish to take any precognitions necessary in any case.

88. In summary cases the costs of precognition will be accounted for in any block fee – a single payment made for legal aid in summary cases, intended to cover all expenditure by the acting solicitor. It is assumed that 64 cases will be marked for prosecution at sheriff solemn or High Court level (see table in paragraph 44).

89. This figure is used rather than the lower figure for cases actually prosecuted as precognitions will occur at a stage prior to prosecution. It is likely that agents would be engaged as a matter of course for nearly all of these.

90. Where solicitors undertake precognitions SLAB pays £36.60 for half an hour's precognition, together with a block fee of £152 for work in relation to the precognition, such as letter writing, telephone calls and meetings beforehand. This adds up to £188.60. If as many as 10 of these cases required the intervention of solicitors who would not otherwise have been employed, this would amount to **£1,886**. A 2% increase in cases, applied to these figures, would increase costs by **£629** and a 10% increase in cases would increase costs by **£3,143**.

Costs on local authorities

91. It is not anticipated that there will be any new costs falling on local authorities as a result of this provision.

Costs on other bodies, individuals and businesses

92. It is not anticipated that there will be any new costs falling on other bodies, individuals or businesses as a result of this provision.

Bail condition concerning precognition

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	2% Increase in domestic abuse incidents	6% Increase in domestic abuse incidents	10% Increase in domestic abuse incidents
SCTS	£46,000	£48,000	£50,000
SLAB	£629	£1,886	£3,143
Total	£46,629	£49,886	£53,143

(NB – the figures above include costs relating to the base from which an increase in domestic incidents is calculated. This is because the new condition will result in new costs arising in respect of this base load as well.)

Schedule 1(2)-(4) – prohibition on conduct of own defence

Costs on the Scottish administration

93. This provision Prohibits an accused person from conducting their own defence whenever either the new offence in this Bill or an offence where the domestic abuse aggravation in section 1 of the 2016 Act has been libelled.

94. The court will have to ensure, at the relevant time that the accused will be legally represented. The vast majority of accused persons do not currently conduct their own defence.

95. In respect of estimating how many cases may be affected, a comparison is available with the provisions in place for sexual offences in respect of where a ban of self-representation operates, which is similar to that proposed for domestic abuse cases.

96. In 2014/15 SLAB authorised payment for 31 cases where a solicitor was appointed by the court. The number of persons proceeded against for sexual offences in that year was 1,632. Thus slightly less than 2% of accused had to have a solicitor appointed for them by the court where they would otherwise have conducted their own defence.

97. Not all individuals who conduct their own defence in sexual offence cases have a solicitor appointed for them by the court. The legislation provides that the court should do this only where accused individuals have not appointed a solicitor themselves. In general, it is to be expected that

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people will prefer a solicitor of their own choosing to act for them rather than one appointed by the court. Thus a number of accused, in these circumstances, would have made their own arrangements. Unfortunately, there is no data held on the number of accused who appoint their own solicitor, but it is also reasonable to estimate that SLAB would have to bear additional costs for this category too.

98. It seems reasonable, therefore, to assume that at least as many accused, and probably more, engage their own agents as have them appointed by the court. It is estimated that altogether some 5% of persons proceeded against in sexual offences are required by the existing legislation to engage agents, or have them appointed by the court, where they would otherwise be conducting their own defence.

99. A similar proportion applied to the 16,556 cases it is suggested (at paragraph 82) would arise under the proposed offence would be a total of 828 cases.

100. Based on the assumption that 5% of accused are unrepresented, the requirement for notification at various stages is estimated to incur additional costs to SCTS of up to **£6,000** per annum. A 2% or 10% increase in the number of cases would lead to total cases of 15,931 and 17,181 cases. If 5% of these were unrepresented that would be 797 cases and 859 cases respectively, and respective increases in costs of **£5,800** and **£6,200**.

101. Under rule 33.6 of the Criminal Procedure Rules 1996, the clerk of court is required to intimate to SLAB the appointment of a solicitor under section 288D(2) of the 1995 Act (proceedings in respect of sexual offences). There will be a similar requirement where a solicitor is appointed in relation to domestic abuse offences (and offences where there is a domestic abuse aggravation).

102. Based on an assumption that a solicitor is appointed by the court in 2% of cases this would result in additional cost to SCTS of **£2,000** per annum. Again this is calculated on the basis of 16,556 cases. The use of 2% or 10% for the increase in cases brought about by the proposed legislation will make the additional cost **£1,900** or **£2,100** respectively.

103. In respect of costs to SLAB, it is considered appropriate to base estimates on the actual cost in 2015/16 of the 31 cases SLAB paid for

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where agents were appointed by the court in sexual offences. This was £66,222 – averaging about £2,140 per case.

104. A similar average applied to 828 cases would give overall costs of **£1,771,920**. This is based on an overall figure of 16,556 cases as provided by a 6% increase. Were the increase to be 2% or 10%, the number of cases estimated to be affected by this provision would be 797 cases and 859 cases respectively. This would lead to increases in costs of **£1,705,580** and **£1,838,260** respectively.

Costs on local authorities

105. It is not anticipated that there will be any new costs falling on local authorities as a result of this provision.

Costs on other bodies, individuals and businesses

106. It is not anticipated that there will be any new costs falling on other bodies, individuals or businesses as a result of this provision.

Prohibition on conduct of own defence			
	2% Increase in domestic abuse incidents	6% Increase in domestic abuse incidents	10% Increase in domestic abuse incidents
SCTS	£7,700	£8,000	£8,300
SLAB	£1,705,580	£1,771,920	£1,838,260
Total	£1,713,280	£1,779,920	£1,846,560

(NB – the figures above include costs relating to the base from which an increase in domestic incidents is calculated. This is because the new condition will result in new costs arising in respect of this base load as well.)

Schedule 1(5) – presentation of certain expert evidence

Costs on the Scottish administration

107. This provision permits expert evidence to be introduced into court where it relates to explaining the behaviour of the complainer in a domestic abuse case (either for the new offence in this Bill or an offence where the domestic abuse aggravation in section 1 of the 2016 Act has been libelled).

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108. Costs will arise not only in respect of those of the expert witnesses themselves, but also in increased court time, and the time of the judiciary and other court officials, in hearing this evidence.

109. Based on 2014/15 figures (for sheriff summary proceedings only) and on the assumption that leading expert evidence may take additional court time of one hour per case, the SCTS estimates this would lead to an extra cost to it of **£778,000** per annum. This is derived from an assumption of 1 hour for each of an estimated 3,634 cases (those domestic abuse cases which actually proceeded to trial in 2014/15), multiplied by the combined judiciary and staffing hourly costs (£214.09).

110. This is an estimate given by SCTS for the central figure of 16,556 cases. Were the increase in the number of cases to increase by 2% or 10% instead, the additional costs would be **£749,000** and **£807,000** respectively.

111. As to costs of expert evidence to COPFS, in 2014/15 the Crown Office spent £142,916 altogether on expert evidence in sexual offence cases. Not all of these monies were spent on expert evidence about behaviour of the complainer. Indeed, given that much expert evidence would relate to forensic science it seems appropriate to assume that one quarter of this total - £35,000 approximately – was spent on evidence relating to the subsequent behaviour of the complainer.

112. As described above, the number of sexual offence cases in 2014/15 was 1,632, or approximately 10% of the number of cases to which it is suggested the new offence will give rise to. Applying these ratios to the costs of expert witness evidence, a reference figure for the costs of this provision may be suggested as **£350,000**. This is based on 16,556 cases, which include an uplift of 6%. Were the increase in the number of cases to increase by 2% (lower estimate) or 10% (high cost estimate) instead, the additional costs would be **£338,000** and **£363,000** respectively.

113. Regarding the defence, it is to be expected that if the Crown leads expert evidence about the behaviour of the complainer, the defence will seek to lead expert evidence to rebut it. This will generally fall to be paid for by SLAB. It is considered appropriate that the costs may be estimated to be not dissimilar to those of the Crown: again, **£350,000** – or **£338,000** and **£363,000** if 2% or 10% estimated increase in number of cases are used, respectively.

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Costs on local authorities

114. It is not anticipated that there will be any new costs falling on local authorities as a result of this provision.

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Costs on other bodies, individuals and businesses

115. It is not anticipated that there will be any new costs falling on other bodies, individuals or businesses as a result of this provision.

Presentation of certain expert evidence			
	2% Increase in domestic abuse incidents	6% Increase in domestic abuse incidents	10% Increase in domestic abuse incidents
SCTS	£749,000	£778,000	£807,000
SLAB	£338,000	£350,000	£363,000
COPFS	£338,000	£350,000	£363,000
Total	£1,425,000	£1,478,000	£1,533,000

Schedule 1(6) – victim safety in relation to sentencing

Costs on the Scottish administration

116. The provision itself does not extend the powers of the court when sentencing e.g. it does not enhance sentencing powers and instead seeks to reassure victims and others that the court will approach sentencing in relevant cases by, amongst other matters, having regard to victim safety. Victim safety is a matter courts will already have regard to albeit without a statutory obligation to do so and it is not anticipated that there will be any new costs falling on the Scottish Administration as a result of this provision.

Costs on local authorities

117. It is not anticipated that there will be any new costs falling on local authorities as a result of this provision.

Costs on other bodies, individuals and businesses

118. It is not anticipated that there will be any new costs falling on other bodies, individuals or businesses as a result of this provision.

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Schedule 1(7) – consideration of non-harassment order

Costs on the Scottish administration

119. The requirement for the court to consider the imposition of a non-harassment order (NHO) in all domestic abuse cases (i.e. for the new offence and where the domestic abuse aggravation under section 1 of the 2016 Act is libelled) will result in additional court time being required.

120. On the basis of that COPFS recorded 12,432 convictions with a domestic abuse marker in 2014/15, SCTS estimate that this will result in an additional cost to them of £89,000 per annum based on additional court time (including judicial and staff costs). For the projected increase of 6%, an additional 746 convictions would give rise to costs to SCTS of £5,500. This amounts to £94,500 in total.

121. The provisions are also likely to result in an increase in the number of NHOs made under section 234A of the 1995 Act. As a result, there is also likely to be an increase in the number of applications to revoke or vary a NHO. This will result in additional costs to SCTS for processing the application including assigning a hearing/ intimation to the parties and the disposal of the application.

122. Although no specific data is available, it is considered appropriate to estimate that 25% of domestic abuse convictions result in an NHO being made, and assume that in 20% of those cases an application to revoke or vary being made, this would result in additional costs to SCTS of around £7,000 per annum.

123. Total costs falling on SCTS would amount to £101,500. Were the increase in the number of cases to increase by 2% (lower estimate) or 10% (higher estimate) instead, the additional costs would be £97,570 and £105,450 respectively.

Costs on local authorities

124. It is not anticipated that there will be any new costs falling on local authorities as a result of this provision.

Costs on other bodies, individuals and businesses

125. It is not anticipated that there will be any new costs falling on other bodies, individuals or businesses as a result of this provision.

Summary of costs

ESTIMATED COSTS OF THE BILL				
	Cost	With projected 2% increase in reporting	With projected 6% increase in reporting	With projected 10% increase in reporting
Recurring costs	Offence as to domestic abuse (section 1 to 10)			
	Cost of additional court cases to COPFS, SCTS, SLAB. (paragraphs 36-46)	£841,078	£2,523,235	£4,205,392
	Cost of existing cases tried in higher forum as a result of new offence. (paragraphs 57-66)	£2,132,968	£2,132,968	£2,132,968
	Costs arising from additional complexity of existing cases	£276,892	£276,892	£276,892

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	(paragraphs 67-69)			
	Costs to SPS arising from imprisonment of offenders (paragraphs 47-53)	£359,230	£1,077,690	£1,796,150
	Costs to local authorities from imposition of Community penalties (paragraphs 77-78)	£139,305	£417,915	£696,525
	Policing costs (paragraphs 54-56)	£240,137	£720,418	£1,200,687
	Costs arising from aggravation in relation to a child (paragraphs 70-73)	£26,930	£28,000	£29,100
	Total annual recurring costs of domestic abuse offence	£4,016,540	£7,177,118	£10,337,714

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Reforms concerning criminal procedure, evidence and sentencing (the Schedule)				
	Costs to SCTS and SLAB arising from bail condition concerning precognition (paragraphs 80-90)	£46,629	£49,886	£53,143
	Costs to SCTS and SLAB arising from prohibition on conducting own defence (paragraphs 93-104)	£1,713,280	£1,779,920	£1,846,560
	Costs to SCTS, SLAB and COPFS arising from presentation of certain expert evidence (paragraphs 107-113)	£1,425,000	£1,478,000	£1,533,000
	Costs to SCTS arising from mandatory consideration of non-harassment	£97,570	£101,500	£105,450

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	order (paragraphs 119-123)			
	Total annual recurring costs of Bill	£7,299,019	£10,586,424	£13,875,867
One-off costs	Training of COPFS staff (paragraphs 74-75)	£45,874		
	Training of Police staff (paragraph 76)	£441,378		
	Updates to SCTS IT systems (paragraph 73)	£25,000		

Costs in first year following implementation and later years

126. The cost of the provisions contained in the Bill, and especially relating to the new offence of abuse of a partner or ex-partner, is highly dependent on the number of additional domestic abuse cases which are reported, investigated, prosecuted and disposed of as a consequence of the introduction of the new offence. For the reasons given at the outset, there is considerable uncertainty as to what the extent of the increase will be and the Memorandum therefore sets out for illustrative purposes, the implications of a 2% increase in cases and a 10% increase, in addition to the central estimate of a 6% increase.

127. An exception will be where new procedural provisions will be applied to cases which would have arisen in any event – new bail conditions, new rules on self-representation and on expert evidence. The difference

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between the amount of these costs incurred in the first year, and in subsequent ones, will be relatively small even at the upper estimate of a 10% overall increase in cases.

128. A significant proportion of the total cost results from the relatively small number of the most serious cases which are tried on indictment. It is likely therefore that in the first years in which the provisions of the Bill are in effect the actual costs may be towards the lower end of the range that has been estimated i.e. more focused on the lower estimate of 2%. This is because in the first months and years after the offence is commenced, new cases involving psychological abuse which are difficult to prosecute using the existing law could only libel this kind of behaviour where it is alleged that it occurred after the date on which the offence came into effect.

129. Over a period of, say, 3 to 6 years, it is likely that there will be more cases in which psychological abuse and coercive and controlling behaviour of the most severe kind, taking place over many months or years, and the annual cost of the offence may increase. However, in making projections of the long-term cost implications of the Bill's provisions, it is important to acknowledge that over the longer term, the offence may have a deterrent effect on would-be offenders, which could lead to a reduction in the number of cases reported for prosecution.

130. With this in mind, it is suggested that the estimated costs in the first couple of years may be more likely to be around the lower estimate (£7.3 million) than the central estimate (£10.6 million), but that the central estimate becomes more likely in subsequent years i.e. from year 3 onwards following the introduction of the offence.

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Domestic Abuse (Scotland) Bill

Financial Memorandum

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