



The Scottish Parliament
Pàrlamaid na h-Alba

Finance and Public Administration Committee

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By email

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Dear Sue

Children (Care and Justice) (Scotland) Bill

As you are aware, the Finance and Public Administration (FPA) Committee is responsible for scrutinising Financial Memorandums (FMs) to Bills and reporting its findings to the relevant lead committee. The Committee ran a call for views on the FM for the Children (Care and Justice) (Scotland) Bill between 25 January and 2 April 2023 and received 15 responses, all of which have been published on the Scottish Parliament's call for views website¹. The written submissions received, including from local authorities and COSLA, raised a number of concerns and pointed to potential underestimates in the FM. This prompted the FPA Committee to further explore the potential costs associated with the measures included in the Bill during oral evidence with the Minister for Children, Young People and Keeping the Promise, at its meeting on 9 May 2023².

This letter sets out the key issues raised during the Committee's scrutiny of the FM, as well as our conclusions and recommendations, which we hope are useful to the

¹ [Published responses for Children \(Care and Justice\) Bill: Financial Memorandum - Scottish Parliament - Citizen Space](#)

² [Meeting of the Parliament: FPA/09/05/2023 | Scottish Parliament Website](#)

Education, Children and Young People Committee as it concludes its scrutiny of the Bill at Stage 1.

The FM sets out overall costs of the Bill between £5.31m and £5.38m per annum for the Scottish Government, and between £5.36m and £6.56m for local authorities. No costs are anticipated for Health Boards, other public bodies, businesses and third sector organisations and individuals.

The FM also highlights that—

“The costs associated with Bill implementation should also be seen against wider trends indicating effective early intervention and whole system approaches in Scotland having a positive effect. Over the last 12 years, this move to a more preventative approach has delivered a 75% reduction in children referred to the Children’s Reporter on offence grounds, an 85% reduction in the number of children and young people prosecuted in Scotland’s courts, and a 93% reduction in 16- and 17-year-olds being sentenced to custody.”

The Minister further explained this context during oral evidence. She highlighted, “for example, [that] the Promise ‘Follow the money’ report estimated that the cumulative cost for physical and emotional harm, lost output and public service costs equated to £3.9 billion”, adding “we will need to consider that in terms of the savings that will be made in the longer term.”

You will be aware that the usual approach to setting out estimated costs in an FM is to align these with the provisions in the related Bill. However, the FM for the Children (Care and Justice) (Scotland) Bill is presented in line with policy areas. This, the Scottish Government argues, is due to the cross-cutting nature of some of the cost areas. It explains that—

“The Bill does display some common themes and interlinked measures. But due to the distinctive nature of the costs associated with each section, this document is structured to explore the cost implications in line with the Bill’s policy areas – rather than the legislation in its entirety.”

There are five parts to the Bill, and under the above approach, discussion on costs is presented under the following headings:

- Parts 1 and 2 – Raising the age of referral to the principal reporter / criminal justice procedure
- Sections 12, 13, 14 – Children at court
- Section 15 - Remittal to the children’s hearings system
- Parts 2 and 3 – Children deprived of liberty – ending under-18s being kept in young offenders’ institutions/secure accommodation
- Sections 24 and 25 – Cross border care placements.

However, actual financial estimates are only included in the FM for:

- Parts 1 and 2 – Raising the age of referral to the principal reporter / criminal justice procedure; and
- Parts 2 and 3 – Children deprived of liberty – ending under-18s being kept in young offenders' institutions/secure accommodation.

For other areas of the Bill, the FM discusses the potential implications of the proposals, without providing actual cost estimates. A range of reasons are provided for taking this approach, including not being seen to cut across judicial discretion, a lack of established datasets, and that detailed assessment of impacts and costs will be identified once secondary legislation is developed.

As stated in Rule 9.3.2 of Standing Orders, FMs must set out “best estimates of the costs, savings, and changes to revenues to which the provisions of the Bill would give rise, and an indication of the margins of uncertainty in such estimates.”

In light of the Scottish Government's approach to this particular FM, as set out above, the Committee draws your attention to the following recommendations to the then Deputy First Minister arising from our post-legislative scrutiny of the Financial Memorandum for the Children and Young People (Scotland) Bill³:

“We believe that outcomes and monitoring information should be considered at an early stage in the development of policy. Evidence provided to the Committee shows that monitoring of expenditure continues to pose challenges to the Scottish Government and local authorities. Robust financial data is needed to provide a clear assessment of outcomes, sustainability and value for money. [...]

The Committee further recommends that future Financial Memorandums include comprehensive information on the Scottish Government's plans to monitor expenditure to ensure that new policy initiatives are being appropriately funded and ensure greater transparency around spending.”

In written submissions to this Committee on the FM for the Children (Care and Justice) (Scotland) Bill, both COSLA and Social Work Scotland raised concerns in relation to the reliability of estimated costs. COSLA said it believes that “the FM underestimates the cost implications for local authorities”, adding that “there are issues with the robustness of the figures being used to inform the costings set out in the FM – many of the costs are based on estimates and so the assumptions may be fundamentally flawed.” Social Work Scotland also argued that the FM does not sufficiently appreciate the scale and financial costs of the additional duties and demands on local authority Children and Families Social Work Services.

The Committee explored these issues during evidence with the Minister, who advised that the Scottish Government is “taking cognisance of decisions that have already been made and where things can be improved”. It is understood that skills

³ [Post-legislative scrutiny of the Financial Memorandum for the Children and Young People \(Scotland\) Bill., 4 October 2022.](#)

and training, which are not reflected in the current FM, will be discussed at a multi-agency resourcing and implementation working group, which starts to meet in June and “will be crucial to our preparations”.

Following evidence gathered at Stage 1, the Scottish Government also intends to update the FM to include the higher projected number of hearings, rather than the lower one currently used. Among other areas that the Minister committed to examine in more detail and update Parliament accordingly, were appropriate mechanisms for the funding of remand costs, resources for aftercare and financial information covering sections 12, 13 and 14 of the Bill (Children at court).

The Minister explained in more detail the engagement approach used in developing the FM and that of the new working group—

“The FM was not based on the engagement with stakeholders but they contributed to it to a high degree [...] I do not necessarily want to say what I think should be in the new financial memorandum; that will be something for the working group to discuss, based on the evidence that we have heard so far and the issues that have arisen with the first financial memorandum.”

She went on to say that “the costs will need updated and updated—there is no getting away from that”, adding “however, I think that the engagement and the evidence that we have had so far will be the best method to prompt discussions around the working group and its future work.”

The Committee also heard that the FM does not take account of current levels of inflation. The Minister accepted that the FM would need to be updated, stating, however, said that this was “a good snapshot in time of what the costs were at that point”.

The issue of secure care funding was also discussed by the Committee during oral evidence, particularly in the context of the financial impact of the removal of cross-border placements. Under questioning, the Minister was unable to provide the Committee with reassurance around the financial sustainability of the secure care sector in the absence of revenue from cross-border placements. The Government’s stated policy aim of reducing those placements to zero would have a significant impact on current providers who are dependent on these resources, with some having up to 50% of placements from outside Scotland. The Minister was also unable to detail how any funding gap arising from cessation of placements who pay above the Scotland excel framework will be made up. This will inevitably lead to lost revenue as the price paid is equalised.

The Committee believes that the formula for calculating the draw on social work resource should be revisited for clarity given the concerns raised in evidence. We also call on the lead committee to ask the Scottish Government to carry out a detailed examination of the impact of its policy approach on the financial sustainability of the secure care sector.

The Minister told the Committee that an updated FM will be presented to the Parliament following Stage 1 of the Bill, based on the conclusions of the multi-

agency resourcing and implementation group, which is due to meet for the first time on 5 June 2023. The Minister explained to the Committee that “we will work with partners to explore individual and combined resource requirements in more depth and report any necessary updates or clarifications to Parliament.”

The Committee is concerned at the lack of financial information contained in the FM in relation to all areas covered by the Bill, particularly in light of previous recommendations this Committee made for improving the clarity and transparency of FMs.⁴ While we understand that some of these costs would be included in secondary legislation in due course, these estimates would not be subject to the same level of Parliamentary scrutiny as if they had been presented in the FM.

We would also be concerned, given ongoing issues regarding the FM for the National Care Service (Scotland) Bill, should there be an emerging pattern of not placing the best possible full and sufficient costings and information before Parliament for scrutiny ahead of Stage 1 votes. The Committee therefore asks the lead Committee in its Stage 1 report to invite the Scottish Government to explain how it will learn lessons from scrutiny of this FM and that on the National Care Service (Scotland) Bill, where similar issues regarding the lack of financial information and the need for further development of cost estimates arose.

The Committee believes that an updated FM should be provided for scrutiny ahead of the Stage 1 debate and we therefore ask the lead committee to pursue this issue with the Scottish Government in its Stage 1 report. Finally, while we understand that the Scottish Government has chosen to present cost estimates in this FM in line with policy areas rather than the provisions in the Bill, we are not convinced that this provides the clarity and transparency necessary for detailed scrutiny. We therefore ask the lead committee to seek more information from the Scottish Government regarding the rationale for this approach.

The Committee invites you to consider the issues raised in this letter, and the written and oral evidence received on the Financial Memorandum, as part of your scrutiny of the Bill. We also plan to reflect further on the issues highlighted above as part of our wider scrutiny of FMs.

Yours sincerely

Michael Marra MSP
Deputy Convener
Finance and Public Administration Committee

⁴ See the Committee’s letter on [Post-legislative scrutiny of the Financial Memorandum for the Children and Young People \(Scotland\) Bill](#) and report on the [Financial Memorandum for the National Care Service \(Scotland\) Bill](#)