



The Scottish Parliament
Pàrlamaid na h-Alba

Finance and Public Administration Committee

Angela Constance MSP
Cabinet Secretary for Justice
and Home Affairs
Scottish Government

By email

All correspondence c/o:

Finance and Public
Administration Committee Clerks
Room T3.60
The Scottish Parliament
Edinburgh
EH99 1SP

Tel: 0131 348 5219

Textphone: 0800 092 7100

FPA.committee@parliament.scot

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Dear Cabinet Secretary

Financial Memorandum for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill

On 26 March 2024, the Finance and Public Administration Committee (FPAC) took evidence on the Financial Memorandum (FM) for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill from the Scottish Government Bill Team. Following this evidence session, the Committee agreed to draw to your attention a number of areas of concern, details of which are provided below. The FPAC also agreed to write separately to the Criminal Justice Committee to outline the issues arising from its scrutiny of this FM, and to the Presiding Officer regarding recurring concerns with the consistency and quality of FMs presented to it for consideration.

Intention to provide an updated FM

At the outset of the Committee's evidence session on 26 March, the Bill Team informed the Committee that officials were working to revise the FM "with the intention of publishing a revised version after stage 2". This, they explained, was due to the difference between the cost estimates provided in the original FM which were "informed by extensive discussions with our policing partners" and those set out in

the written submissions received by the Committee - principally Police Scotland's response.

During evidence, Scottish Government officials stated that "overall, the information that has been gathered via the call for evidence reflects a greater understanding of the impacts of the bill", and they identified three areas (listed below) where costs had changed following publication of the responses to the Committee's call for views. The Committee is unclear why officials intended to bring forward a revised FM after Stage 2 rather than providing updated figures to inform the Committee's evidence session on 26 March. This is particularly troubling given the Scottish Government was aware that the figures were incorrect for some six months and it is disappointing that this approach undermined the Committee's ability to properly scrutinise the full costs of the Bill. Officials explained that their understanding of the process, as set out in the Bill handbook, was to bring forward such revisions after Stage 2. We have therefore requested a copy of the Bill handbook which is provided to support Bill teams on the development and passage of legislation, and we intend to pursue this issue further with the Permanent Secretary when he gives evidence to the Committee in May 2024.

We note that the Scottish Government now intends to bring forward an updated FM as soon as possible, in order for the Committee to be able to feed into the lead Committee's Stage 1 scrutiny of the Bill, and we therefore ask that an updated FM is provided by no later than Wednesday 1 May 2024.

Accuracy of estimated costs

The FM estimates the Bill's total annual ongoing costs to be between £520,424 and £1,414,474. However, in its written evidence, PS states that the figures provided in the FM are "significantly underestimated", estimating the projected financial impact of the Bill to cost £4,985,595. Scottish Government officials explained that the following three main cost areas highlighted in Police Scotland's written evidence accounted for this divergence—

1. Staff costs

Scottish Government officials agreed with PS that additional staff costs would be incurred as a result of the Bill's provisions, stating that they "accept that there will be a need to increase resources in Police Scotland's professional standards department to support the bill's provisions, and we intend to capture that in the revised memorandum".

2. Legal costs for former officers

PS's written evidence states that the figures included in the FM relating to legal costs for former officers are "vastly underestimated", and that PS would be unable to meet these costs within existing budgets. Scottish Government officials told the Committee that these costs are "dependent on estimates of the number of additional cases and the average cost to support an individual's attendance at a hearing". Although the costs included in the original FM were prepared using information provided by Scottish Police Federation and PS, officials explained that those organisations have

since revised their cost estimates and that these will be reflected in the updated FM to be provided ahead of the Stage 1 debate on the Bill.

3. Training costs

In its response on the Bill's FM, PS stated that it "is unable to deliver the additional provisions of the Bill and associated essential training requirements within existing budgets and additional funding must be factored into future budget allocation for Police Scotland". It estimated that the Bill's police conduct provisions incur total training costs of £1,517,000, plus recurring costs of £758,000.

In evidence, Scottish Government officials stated that in their initial engagement, PS had indicated that training costs associated with the Bill's provisions would be absorbable, and that, prior to the production of the FM, PS concentrated on the impacts of the Bill on the professional standards department. Since the FM's publication, PS has adopted a more robust approach involving the consideration of potential cost impacts across the organisation. Officials also stated that PS's change of position is due to the statutory duty the Bill would place on the Chief Constable to ensure that all officers have undertaken the training, and "that key point was unknown to Police Scotland" at the time of its own consultation.

The Committee notes that, should PS's cost estimates prove accurate, the overall costs associated with the Bill would be significantly higher than those set out in the original FM. Asked whether the figures presented in the evidence from PS were more accurate than those set out in the original FM, Scottish Government officials stated that "the associated legal costs and the staff costs have increased, and we broadly accept what Police Scotland is saying in that regard". They stated that, with regards to costs associated with training elements, they are engaging in "on-going discussion with Police Scotland ... largely because the costs that it has set out include opportunity costs, such as officers concentrating on the training as opposed to other tasks, rather than direct costs".

Engagement with Police Scotland

During the evidence session, Committee Members raised concerns about the effectiveness of Scottish Government engagement with Police Scotland both prior to publication of the FM and since the Bill had been introduced. As we note above, officials confirmed that PS were not aware of the nature of the statutory duty the Bill would place on the Chief Constable until the Bill was introduced and published. We therefore question why PS was not given sufficient information to provide full cost estimates as the Bill's drafting developed.

We are also concerned that Scottish Government officials were unaware of the full extent to which PS's cost estimates differed from those contained in the FM until the Committee published PS's response to its call for views. Officials confirmed that they first learned, through the Scottish Police Consultative Forum in September 2023, that PS had estimated that the Bill could have a substantially greater cost to them than the FM had identified, however, PS did not provide these costs to officials directly at that time.

During the Committee's 2023 inquiry into effective decision-making, we sought clarification about how the Scottish Government assesses the quality of its engagement across the different policy areas in Government to identify any areas for improvement. The Deputy First Minister highlighted the role of its Policy Profession Curriculum and Participation Framework in supporting effective engagement. While we note that Scottish Government officials had "extensive discussions with our policing partners" to inform the FM costs, **we seek your views on the effectiveness of this engagement given the vastly different cost estimates provided by PS in written evidence which officials were previously unaware of, and the evidence heard by the Committee as set out above.**

We also seek confirmation that the updated FM will set out details of the engagement undertaken between Police Scotland, Scottish Government Officials, and other relevant stakeholders, as well as how the Scottish Government has satisfied itself that the updated figures are accurate.

Consistency of FMs

The Committee has previously raised concerns about the consistency of FMs presented to it for consideration, including in its letter of [8 February 2024](#) to the Scottish Government regarding the FM for the National Care Service (Scotland) Bill. We were therefore concerned to see costs in this FM being presented as either "material" or "immaterial", with a figure of £10,000 being used as a benchmark for materiality. While we understand that Scottish Government officials considered this may be helpful information for the Committee, particularly given an element of uncertainty in estimating some costs, this is new terminology and inconsistent with the usual approach to FMs. Furthermore, we are unsure why the decision was taken to present some estimated costs as precise figures (to the nearest £1) and others as rounded estimates, which again appears to represent inconsistency in the Scottish Government's approach to the drafting of FMs. The Committee's preference, as set out in Parliamentary Bill Guidance is for margins of uncertainty to be used where uncertainties arise. **We therefore seek details of how you assessed, prior to laying this Bill in Parliament, whether the presentation and description of figures in the FM accorded with the approach taken by other FMs.**

The Committee asked Scottish Government officials whether templates are available to assist with consistency in the drafting of FMs, what guidance they are able to access, and what training they are required to undertake. Scottish Government officials explained that templates are used for drafting FMs, and that guidance is available in the Bill Handbook This is intended to be a 'living document', which allows it to be regularly updated. Scottish Government officials also stated that training is delivered through eight 1-hour sessions, and that the Scottish Government's Parliamentary Liaison Unit is responsible for providing this training. The Committee has some concerns regarding the adequacy of current guidance, templates and training available to officials involved in the drafting of FMs and that this may be a contributory factor to the Committee continuing to be presented with FMs that are inconsistent in presentation and level of detail. As noted above, we plan to pursue this further with the Permanent Secretary when he gives evidence in May 2024.

Use of framework Bills

As you may be aware, the FPA Committee has ongoing concerns regarding the increasing use of framework Bills and the significant challenges for effective scrutiny of cost estimates associated with legislation presented by this approach. Our concerns in this area are set out in detail in our [December 2022 report](#) and supplementary letter of 8 February 2024 to the Scottish Government in relation to the FM for the National Care Service (Scotland) Bill. During the 26 March 2024 evidence session with the Bill Team, the Committee asked whether consideration is given to risks of overspending and inefficiency associated with framework Bills during the drafting process. The Bill Team responded that they were not aware of any such discussions, stating that the decision to present a framework Bill in this case was based on judgements about the best way to implement the intention of the legislation, but that the impact of framework legislation in general was not considered. **We therefore seek details of the process of consideration given to risks of overspending and inefficiencies prior to the introduction of a Bill to Parliament, given the concerns the Committee has identified in relation to framework Bills.**

The impact of framework Bills in limiting Parliamentary scrutiny is an issue I know other Conveners are also concerned about and one which we will continue to pursue.

The Committee looks forward to receiving your response to this letter and the updated FM by 1 May 2024.

Yours sincerely

Kenneth Gibson MSP
Convener
Finance and Public Administration Committee