

Kenneth Gibson MSP
Convener
Finance and Public Administration Committee
The Scottish Parliament
Edinburgh
EH99 1SP

22 April 2024

Dear Convener

I am writing to respond to your letter of 16 April 2024 regarding the Financial Memorandum (FM) for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill and the evidence session you had with the Scottish Government Bill team on 26 March 2024.

My response is confined to the issues specific to my Bill taking account of the new evidence identified during Stage 1, principally from Police Scotland (PS). The Minister for Parliamentary Business has addressed the more general points you have raised in his separate letter of 18 April 2024.

My officials stated the Scottish Government would revise the FM in light of new evidence received by the Finance and Public Administration Committee in their call for views and correctly identified that this would take place after Stage 2. The Minister for Parliamentary Business confirms in his letter that there is no formal process in the Standing Orders or any known convention in place that provides for revised FMs to be made available earlier than this.

During their evidence, officials explained the methodology used for developing the FM and confirmed that stakeholders were asked to provide data that would help to estimate the financial implications of the Bill. The information within the FM was therefore derived from source by the organisations directly affected by the Bill provisions, and this was complemented by desk-based research.

The Scottish Government accepts PS's rationale for updating the information previously provided to the Bill team, and more is said about that below. I wish to make clear that PS were aware of the policy intent and broad statutory duties of the Bill, however, as PS state in their response to your Committee's call for evidence, "*costs could not be accurately quantified until the text of the Bill was published*". It should also be noted that in the considerable time between the Bill's introduction on 6th June 2023 and PS's views being

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published on 8 November, was also during a period of extremely challenging inflationary pressures and the uprated pay settlement for Police Officers.

In terms of the effectiveness of the Bill team's engagement with PS, I have full confidence in the Scottish Government's engagement with PS at all levels, whilst maintaining the operational independence of Police. The Bill team hosted several meetings with policing partners to consider the legislative proposals and at each meeting stakeholders were asked to provide data that would help to clarify the financial implications of the proposals and information was exchanged frankly. PS state in their evidence that "contact was maintained with the Scottish Government Policy Team to explore potential costs". This engagement helped PS better assess the costs to respond to the call for evidence.

Officials were informed at the Scottish Police Consultative Forum in September 2023 that costs were considered greater than the FM had identified. On 6th November 2023, PS informed officials of their Committee response which was published on the 8th. Following the provision of PS's evidence my officials continued to engage with them to understand the differences.

Let me now address the substantive elements of the cost difference:

Code of Ethics / Duty of Candour

There is already a non-statutory code of ethics for policing in Scotland, which sets out the standards of those who contribute to policing in Scotland, and which will form the basis for the statutory code proposed in the Bill. The duty of candour which is also an existing part of police ethics because police are public servants, is also proposed to become statutory. The fact that the Bill would place the existing code of ethics and duty of candour on a statutory footing was always known. Prior to introduction, the Bill Team understood from PS that any training costs around the Code would be absorbed as part of the wider police training programme which would incorporate changes made by the Bill.

PS reconsidered their position after the Bill's introduction noting the Bill's requirement that the Chief Constable take all steps necessary to ensure that constables have read and understand the Code. Whilst we expect that many of the steps necessary to fulfil that duty are already in place in the existing professional ethics training, the inclusion of this duty on the Chief Constable caused PS to revise their training costs because, in their view, "*a robust regime of training*" is required to enable the Chief Constable to ensure statutory compliance. Given the importance of this part of the Bill and the very real need to ensure that constables are provided with rigorous training on their professional ethics, the SG accept the costs attributable to the training on the code of ethics and duty of candour.

Costs in relation to sections 2 and 3 were assessed in the Financial Memorandum as £0. Costs are now £ 1,522,000 one-off and £793,500 recurring assessed as follows:

1. One-off costs for:
 - a. Officer training £1,100,000 and,
 - b. Staff training £417,000
 - c. Training specialist £35,000

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This totals £1,552,000 in one off costs to PS.

2. Recurring costs:

- a. Officer training £550,000
- b. Staff training £208,500
- c. Training specialist “ad hoc” £35,000

This totals £793,500

3. PS set out costs for training specialist “champions, advisors and coordinators” initially and then “ad hoc” recurring. The costs are included in the numbers above.

PS also assess additional administrative costs to ensure statutory compliance. Costs for drafting, consulting and marketing are unknown by PS.

Misconduct procedures for former officers (cost on individuals)

PS and the Scottish Police Federation now say the costs are higher than those presented to the Scottish Government prior to introduction. They state there is potential for more cases (29 instead of 14) and the legal costs are greater (£48,000 instead of £28,000). This then means when the changes proposed in the Bill are put in place that the total cost is £1,392,000 but only if all officers seek legal representation.

The Bill does not stipulate a requirement for legal representation, however, there could be costs incurred by individuals who seek legal support to attend a hearing after they have retired that are not likely to be covered by police staff associations. This would mean that individual retired officers who sought legal representation would incur costs of approximately £48,000.

Costs were assessed in the Financial Memorandum as £392,000
Costs are now £1,390,000

Misconduct procedures for former officers (cost on PS)

Currently, disciplinary proceedings for gross misconduct are halted if the constable resigns or retires but in future these will continue to a conclusion. This will mean that there are likely to be longer hearings and more proceedings. PS have set out detail on the required increase in headcount, the grades involved and accounted for the most recent pay settlement.

The Professional Standards Department will need to increase by 4 FTE at a cost of approximately £230,000 for servicing additional investigations and hearings on account of other changes in the Bill. PS also now assess that continuing hearings against officers who would currently resign or retire will require an uplift of 10-12 officers which would be in the region of £540,000 - £720,000.

A third element is for cases against former officers which come to light after they have retired or resigned. PS assess this as £300,000 in ongoing costs.

Costs were assessed in the Financial Memorandum as £211,000
Costs are now £1,250,095 (upper estimate)

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In total, the new information in comparison to the original FM is as follows:

	Financial Memorandum	Revised PS	Revised SCTS	Increase	Overall total revised costs
One off costs					
Courts	£0		£3,000	£3,000	
Other bodies	£801,134			£0	
Training	0	£1,552,000		£1,552,000	
Total One-off	£801,134	£1,552,000	£3,000	£1,555,000	£2,356,134
Recurring Costs					
Legal expenses for individual.	£392,000	£1,390,000		£998,000	
Staff costs for PS	£211,000	£1,250,095		£1,039,095	
Training		£793,500		£793,500	
Courts	£10,340			£0	
Total Recurring	£613,340	£3,433,595	£0	£2,830,595	£3,443,935
Total	£1,414,474	£4,985,595	£3,000	£4,385,595	
Overall total revised costs					£5,800,069

Finally, in response to your comments about “framework” bills, whilst noting there is no definition of a framework bill, I do not consider the Police Ethics etc Bill to be a framework bill. The Bill is an amending one working within the current legislative landscape, which includes the Police, Public Order and Criminal Justice (Scotland) Act 2006 and the Police and Fire Reform (Scotland) Act 2012 with regulations made under both. The Bill is amending these pieces of legislation.

Where some areas of the law, such as police misconduct, are already dealt with under secondary legislation, the Bill ensures that the Scottish Ministers have the tools to amend that secondary legislation. For other areas, such as the Code of Ethics, Duty of Candour, SPA liability for Chief constable, and new powers of the PIRC and PIRC governance, the Bill itself makes the majority of the substantive changes that are required to primary legislation, with some minor, technical or process driven aspects left to secondary legislation, such as adding to lists of consultees for the Code of Ethics.

I hope this information is of use.

Yours sincerely,

ANGELA CONSTANCE

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