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Economy and Gaelic
Leas Phrìomh Mhinistear agus Rùnaire a' Chaibineit
airson Eaconamaidh agus Gàidhlig
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Kenneth Gibson
Convener
Finance and Public Administration Committee
The Scottish Parliament
Edinburgh
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30 May 2025

Dear Convener,

I am writing in response to your letter dated 22 April 2025 requesting evidence to inform the inquiry into the cost-effectiveness of Scottish public inquiries. I am keen to learn of the outcomes from the Committee's inquiry and of its conclusions in relation to the question of cost-effectiveness.

Below I have addressed each of the points set out in your letter in turn. In doing so, I have aligned my responses to the powers and duties of Scottish Ministers under the Inquiries Act 2005 and acknowledged the provisions of section 17 of the Act. Section 17 confers responsibility for the procedure and conduct of an inquiry on its Chair, independent of Ministers, including the duty to act with regard to the need to avoid any unnecessary cost to public funds. The Scottish Government remains committed, in its role as sponsor of public inquiries, to providing operational support as the Chairs consider necessary and appropriate, to enable them to carry out their independent work. However, it is for each inquiry itself to provide evidence to the Committee on matters which are for the inquiry itself, and I am aware the Committee has already engaged with the current live inquiries on the matter of costs.

The Committee requests details of this (“that the Chair can require a person to give evidence or provide documentation (Clause 21) and that this might be relevant in deciding whether to take a statutory or non-statutory inquiry route”) and any other factors the Government gives early consideration to when deciding whether to establish a statutory inquiry into particular events that have caused, or could cause, public concern.

The framework for statutory public inquiries is set out within the Inquiries Act 2005 (“the 2005 Act”) and the rules made under this Act which are specific to Scotland – the Inquiries (Scotland) Rules 2007. Both the Act and the Rules set out a number of obligations on Scottish Ministers and on the Chair of an inquiry, amongst other matters.

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In Scotland there are two main types of public inquiry: statutory and non-statutory. A non-statutory inquiry is commissioned by the Scottish Ministers and does not take place under the authority of an Act of Parliament. One aspect of a non-statutory inquiry is the fact that provision of evidence via witnesses and documents to the inquiry is entirely voluntary, which can mean that the procedure is perceived as more flexible and less formal when compared to a statutory inquiry.

A statutory inquiry is held under the provisions of the UK-wide 2005 Inquiries Act. Subject to any restrictions imposed, there is a general right of public access to inquiry proceedings and information. One significant difference from a non-statutory inquiry is that statutory inquiries have powers to require the production of evidence and the attendance of witnesses, which is often cited by those campaigning for an inquiry to be established as a compelling reason for establishing it on a statutory basis. It should be noted that in respect of an inquiry established by Scottish Ministers, this power is specifically in relation to evidence and documents concerned with Scottish matters.

Ministers also, as appropriate, consider alternatives to an inquiry, such as establishing a Commission or Committee independent of Ministers to investigate a set of circumstances. There may also be other alternatives in certain circumstances, such as a Fatal Accident Inquiry or a regulatory investigation, that will weigh upon a decision to establish a public inquiry. These alternatives to a public inquiry may provide a means of investigating issues of public concern and providing recommendations going forward in shorter timescales and/or at less overall cost than public inquiries. Such considerations would be part of a decision-making process, alongside other relevant factors.

When considering what type of inquiry or investigation is required, Ministers will take into account the details and background of each event(s) of, or with the capability to cause, public concern, and assess this against the types of inquiry and investigations that are possible. Decisions are based on the requirements for that particular case and will normally take into account the views expressed by Parliament, stakeholders and those directly affected by the event(s) of public concern.

The Committee seeks details of the type of information the Scottish Government would take into account in specifying a ‘setting-up-date’ and what aspects it would ordinarily include in an inquiry terms of reference. For example, whether the Government routinely sets an expectation of when a public inquiry should report.

During the drafting of the Terms of Reference (ToR) for an inquiry, Ministers and officials have the opportunity to engage with those most closely affected by the event(s) of public concern, such as victims and survivor groups, in order to obtain a clear understanding of their views on what the scope of the inquiry should be. In setting terms of reference, Ministers would seek to reflect outcomes of engagement with stakeholders and interested parties as far as possible, as well discharging the duty under the section 5 of the Inquiries Act to consult with the Chair before setting the ToR, and any legal obligations which the Inquiry is being established to satisfy. It is important to be clear in setting ToR on the intended scope of an inquiry. Once set, the interpretation and implementation of the ToR is an operational matter for the Chair, independent of Scottish Ministers.

The full terms of reference of all 2005 Act Inquiries are publicly available.

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Ministers have not sought to specify in ToR a fixed date by which any current inquiry must conclude, in order to ensure there is no impediment to the ability of the Chair to follow evidence wherever it may lead, and that their independence from government is manifest to all those with an interest in the inquiry.

However, the Scottish COVID-19 Inquiry ToR provide an example of how an overall expectation in relation to reporting timeframes can be included. Ministers have always made clear their expectation that the inquiry should complete its work timeously, addressing the range of questions that people have, so that we can learn and benefit from lessons as early as possible. The terms of reference therefore include an expectation of the inquiry “To provide reports to the Scottish Ministers as soon as practicable.” How the inquiry fulfils that expectation in practice is, under the legislation, a matter for the Chair.

Setting an indicative timescale can assist in providing reassurance to those affected by the event(s) of public concern, such as victims and survivors, that lessons learned will be forthcoming. It can also assist in managing the expectations of the wider public. However, the inclusion of provision within ToR in relation to desired timescales for outcomes of an inquiry process should be balanced with building confidence that an inquiry has the necessary time to conduct a thorough investigation and to follow evidence where it may lead. It is expected throughout the lifetime of an inquiry that it will communicate updates on its activity and progress as the Chair considers appropriate.

Under section 5 of the Inquiries Act, an inquiry cannot consider evidence in advance of its setting up date, and the Act confers the role of confirming the setting up date for an inquiry on Scottish Ministers. In practice, Ministers would consider the setting up date in consultation with the Chair of an inquiry, in recognition of the Chair’s independence under section 17 of the Act to determine the procedure and conduct of their inquiry (including when and how evidence is requested and managed). This assists in ensuring that the setting up date reflects the point at which the Chair determines an inquiry is ready to receive evidence.

Does the Scottish Government have a specific public inquiries unit and if so, how does it work with the UK Government’s Cabinet Office Inquiries Unit. Also, the Committee asks how the Scottish Government captures best practice and lessons learned from previous Scottish public inquiries.

The Scottish Government does not currently have an Inquiries Unit. The Cabinet Office has run an Inquiries Unit since 2009 and they are responsible for the UK-wide engagement, including Scotland, on collation and sharing of examples of good practice. Inquiry teams in Scotland have the opportunity to engage in networks and access materials such as case studies which are maintained by the Cabinet Office team, though there is no obligation to do so.

Public inquiries are encouraged to produce a ‘lessons learned’ document that will inform future practice. These documents would in future inform further iterations of guidance in relation to public inquiries which was laid in Parliament by the Scottish Government in 2024.

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Breakdown of Costs for all Public Inquiries that have reported

The table below provides an overview of the costs for each of the inquiries that have reported listed in annex A of your letter, as requested. It does not provide information in relation to those inquiries currently operating, which the Committee has sought from the inquiries directly.

Inquiry	Staff Costs	Operational Costs	Expenses	Inquiry Legal Services	Engagement	Research and Consultancy	Core Participant Fees
The Campbell Inquiry	Not available	Not available	Not available	Not available	Not available	Not available	Not available
The Penrose Inquiry	£3,342,662	£1,921,786	£977,036	£5,151,818	£730,493	Not available	Not available
The “Stockline” ICL Inquiry	Not available	Not available	Not available	Not available	Not available	Not available	Not available
The Vale of Leven Inquiry	£5,292,347	£1,401,599	£47,498	£1,644,701	Not available	£682,626	£14,561
Edinburgh Tram Inquiry	£6,522,055.45	£3,584,551.16	£12,285.84	£3,038,396.06	£319,012.27	£166,905.65	Not available

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In relation to the inquiries listed, the Committee asks how many Scottish Government staff have been seconded to inquiry teams since 19 January 2008, when the Inquiries (Scotland) Rules 2007 commenced. The Committee also asks what general guidance the Scottish Government provides to inquiry chairs in terms of cost-effectiveness and whether there is a protocol in place for public inquiries to share detailed cost information with the Scottish Government during the inquiry.

While decisions on running an inquiry are ultimately for the Chair, the Scottish Government provides new inquiries with guidance on ways to deliver value for money on issues such as agreeing leases, procuring IT and appointing staff. It is of course for each inquiry to determine which operational design to adopt, but each sponsor team within Scottish Government is able to liaise with an inquiry to provide additional support from relevant corporate teams within Scottish Government, should the inquiry wish to utilise existing Scottish Government frameworks in relation to goods and services.

With regards to the inquiries listed in annex A of this call for evidence, there is no central record maintained of all Scottish Government staff that have been seconded to public inquiry teams since the Inquiries (Scotland) Rules 2007 came into effect. Staffing is a matter for each inquiry Chair, and inquiries will typically utilise a mix of civil servants on assignment, external contractors with specialist / professional skills, and agency staff, over their lifetimes as each Chair considers appropriate.

In relation to costs, again there is no single record maintained by Scottish Government of cost information relating to current and former inquiries. In Scotland, budgets in relation to current public inquiries are funded via the sponsoring Ministerial portfolio within Scottish Government, but publication of information in relation to costs is undertaken independently by each inquiry. All inquiries are encouraged to engage with sponsor teams to communicate likely budget requirements in order to inform development of the Scottish Government budget each year, and to advise sponsor teams if expected requirements change or evolve. Within this expectation, it is for each inquiry to decide how much supporting detail underpinning estimated budget requirements is shared with the sponsor team, in view of the sensitivity of operational detail of an inquiry's work and, in particular, investigations.

Current practice is that budget allocations for individual inquiries are not itemised on the face of the budget documentation in recognition of inquiries' statutory independence, and to avoid risk of perception that Ministers could fetter the independent activity and/or investigations of an inquiry through budgetary limits or levers.

With regards to the inquiries listed in annex A of this call for evidence, I have indicated where information was found to be unavailable.

The Committee seeks information on how many of these recommendations have been implemented for each of the public inquiries listed. We further request details of the Scottish Government's role in monitoring and ensuring the implementation of recommendations that fall within its ambit and those of Scottish public bodies.

Under the 2005 Act, the Chair of an inquiry must provide a final report to the Minister setting out the facts determined by the inquiry panel. Where the terms of reference require recommendations to be made the chair will also be required to set out any recommendations. Such recommendations for example could include recommendations for change to the Government, or another relevant public body. The report may also contain

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anything else that the panel considers to be relevant to the terms of reference (including any recommendations the panel sees fit to make despite not being required to do so by the terms of reference). The Scottish Government consider the recommendations and publishes their response, detailing which recommendations are accepted and which are rejected, as a matter of convention. There is no legal obligation to respond to a report.

The 2005 Act also does not contain any provision for centrally monitoring whether the accepted inquiry recommendations are actually implemented. In practice, an area of government will be identified as responsible for taking forward recommendations (where appropriate) and ensuring delivery where they are accepted. Recommendations may also be made by an inquiry relating to other parties, such as public bodies, which would be for their consideration.

I trust that you find this evidence helpful to the Committee's inquiry.

Yours sincerely,

KATE FORBES

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