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By email to: FPA.committee@parliament.scot

18 April 2024

Dear Convener,

I am writing to you in view of continued interest from a number of committees and MSPs in relation to “framework” Bills and the quality of Financial Memorandums (FMs) provided by the Scottish Government. I note these issues arose when the First Minister recently appeared before the Conveners Group, when civil servants gave evidence to your committee in relation to the Police (Ethics, Conduct and Scrutiny) Bill and in recent correspondence from you to the Cabinet Secretary for Justice and Home Affairs. The Cabinet Secretary will be writing to you in response to issues specific to her Bill and my letter addresses the more general points you have raised.

I should make clear at the outset that I have considered carefully the various points raised by your committee and I am keen to move the discussion into a more positive space about how matters might be improved in future.

I attach for your information a letter I recently sent to the Delegated Powers and Law Reform Committee in response to correspondence from it in relation to “framework” Bills. It sets out my position that the Scottish Government does not set out to routinely create Bills which are framework in character, that I do not accept that the Government’s legislative programme is comprised mainly of framework Bills, and that questions about the appropriate balance to be struck between what provision to include on the face of a Bill and in secondary legislation are not new. You will also note from that letter that I do not include the Police (Ethics, Conduct and Scrutiny) Bill within the list of session 6 Scottish Government Bills which I consider could fairly be described as “framework” Bills.

In terms of FMs for Bills, I thought it would be helpful to set out the Government’s approach to their preparation and to address some of the issues which came up when civil servants gave evidence to your committee in relation to the Police (Ethics, Conduct and Scrutiny) Bill. I note in your letter to the Cabinet Secretary for Justice and Home Affairs that you referenced asking for a copy of the Scottish Government’s “Bill Handbook” from the Permanent Secretary and I attach to this letter extracts from it and associated guidance relevant to development of FMs.

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The Scottish Government takes seriously the need to provide a robust articulation of the potential financial impact of the Bills it brings forward. Indeed, the Government can only introduce a Bill if the requirement set out in rule 9.3.2 of Standing Orders to provide “a Financial Memorandum which sets 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 margin of uncertainty in such estimates” is met. That requirement was met when the Police (Ethics, Conduct and Scrutiny) Bill was introduced on 6 June 2023, as it has been for every other Bill introduced by the Government this session. The lengths to which the Government goes to meet this requirement is reflected in the volume of information which is now set out in FMs, with FMs in session 6 averaging 24 pages compared with an average of 4 pages in the first session of the Parliament.

Volume obviously needs to be matched by quality and that is what the Government aspires to. I note there was some questioning of the training which the Police (Ethics, Conduct and Scrutiny) Bill Team had received when they appeared before your committee. I am entirely satisfied that the Bill Team has the necessary skills and experience to deliver the Bill and that they followed all relevant processes and procedures when developing their FM. Like all Bill Teams they can, and do, draw on a wide range of support and expertise across Government during the development and parliamentary passage of their Bill. Like all other aspects of the Bill development process, Bill Teams are encouraged to start the process of developing FMs as early as possible and to devote adequate resource to the task. General guidance on the Bill process is provided to Bill Teams, and the interests of your committee in FMs is emphasised and is well understood across the Government. Written guidance on the development of FMs is provided to Bill Teams to ensure a consistent approach is taken. Bill Teams can call on the support and assistance of portfolio Finance Business Partners in preparing estimates of costs and savings and in considering how best to present that information in FMs. Where particularly complicated calculations and methodologies are involved, Bill Teams can also draw on portfolio analysts. Bill Teams are also expected to consult widely with stakeholders who will be impacted by the Bill so that their views on costs can be taken into account in modelling.

A range of Ministerial controls are also in place to ensure appropriate oversight of the financial impact of Bills and their presentation in Financial Memorandums. When Cabinet decides which Bills should be accepted onto the annual legislative programme it takes into account anticipated costs and affordability within the relevant portfolio and in terms of the Government’s overall financial position. Cabinet considers these issues again before a Bill is cleared for introduction to Parliament. And before FMs are submitted to the Parliament they must be cleared by the lead Minister responsible for the Bill as well as the Deputy First Minister and Cabinet Secretary for Finance. I do not accept the suggestion made during the committee’s evidence session that the Police (Ethics, Conduct and Scrutiny) Bill represents “a significant risk of a waste of money” and I can assure you that the wider financial climate is at the forefront of officials’ and Ministers’ considerations at all times and especially when progressing new legislation.

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But no FM can be perfect. FMs are based on estimates and ranges using the best information available to the Government at the point a Bill is introduced. They cannot and do not purport to set out precisely what costs will arise, and a margin of uncertainty is inevitable. In some cases, considerable time can pass between a Bill's introduction and scrutiny of the relevant FM by your committee.

I note the discussion which took place at committee around new information which had emerged on the potential costs of the Police (Ethics, Conduct and Scrutiny) Bill after its introduction. It is worth emphasising that there is no formal process under Standing Orders for submission of an updated FM during Stage 1 – Standing Orders (Rule 9.7.8B) provide only for revised or supplementary FMs to be provided if a Bill is amended at Stage 2 so as to substantially alter any costs, savings etc. There is also no convention in place that I am aware of which governs precisely when and how updated information should be presented to your committee prior to that. My understanding of these issues is therefore at odds with comments made during the committee's discussion of the Police (Ethics, Conduct and Scrutiny) Bill that submitting an updated FM ahead of Stage 1 "is how it has always been done and should be done" and that the "financial memorandum should be a living document up until it is presented to the committee in an updated form". Given the difference in perspective we have on this issue, I think there would be merit in developing a standard approach for updating your committee when Bill Teams become aware of any significant change in costs after a Bill has been introduced, and I have asked my officials to engage with your clerks on that.

More generally I am keen to ensure that when the Scottish Government prepares FMs for Bills there is absolute clarity on what type of information your committee would expect to be presented, how it would wish to see that information presented, and its preferences on the methodologies which should be adopted when developing financial estimates. My understanding is that there is currently no written description of the committee's preferences on those issues which the Scottish Government can refer to. I have therefore asked my officials to engage with your clerks to get a better understanding of these matters, and any specific concerns which the committee has had in relation to recent FMs, and for my officials to then conduct a full refresh of the guidance which supports the development of FMs in order that the committee's views can be appropriately reflected.

Similarly, it is always helpful for my officials and me to be able to point to examples of best practice so that future lead Ministers and Bill Teams can refer to these as they take forward development of their Bills. It would therefore be helpful if you could point to any recent FMs which the committee has found particularly helpful and persuasive in articulating the Government's best estimates of the financial implications of the relevant Bills.

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Finally, part of the support which Bill Teams can draw on in development of their Bills (before they are introduced to Parliament) is a periodic seminar series which my officials facilitate which deals with specific aspects of the legislative process. I deliver one of those sessions, focusing on the issues which Bill Teams can expect to be pressed on during parliamentary scrutiny of their Bills. Given the concerns raised by your committee about the preparation of FMs, I would be happy to ask my officials to add a new session to that seminar series for you and your clerks to have the opportunity to engage directly with future Bill Teams on how your committee will approach scrutiny of their FMs and what your expectations are for the presentation of financial information in those FMs. Please let me know if you would like to take up that offer.

I am copying this letter to the Presiding Officer.

Kind regards,

GEORGE ADAM

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EXTRACTS FROM SCOTTISH GOVERNMENT GUIDANCE

Bill Handbook, page 17

5.1 PLU eRDM Folders

PLU maintains a range of materials on eRDM which support the formal advice set out in this Bill Handbook. There you can find additional forms of guidance (e.g., on the Bill Management Meeting process), templates (e.g., Bill Monitoring Reports), examples of documentation produced by previous Bill Teams, and information on key processes and procedure related to the Bill process (e.g., the [Scottish Ministerial Code](#)). There are two separate files which Bill Teams can access:

[Guidance and Training](#)

[Templates and Examples](#)

Please ensure that you do not edit, or delete, any of these files. If you need to use a template, please download a copy first before filling it out.

Bill Handbook, page 21

6.2 The core Bill Team

- **Finance** – The Bill Team is responsible for ensuring that a robust picture of the financial consequences of the Bill is developed, and that funding arrangements are put in place to cover any new expenditure.

Bill Handbook, page 29

6.11 Finance

The Bill Team's consultation should include the potential costs or benefits of the Bill. The Bill Team should seek advice from relevant areas of expertise, including their Finance Business Partner (or equivalent) and Analytical Services Division. This engagement is key to the development of the Financial Memorandum in respect of your Bill (which is one of the accompanying documents required under the Standing Orders).

Financial Memoranda offer the Parliament the best possible information on the costs (and benefits) arising from proposed legislation. Estimates of the costs and benefits of a Bill are therefore required under the Parliament's Standing Orders regardless of budgetary considerations. PCO can advise on the specific requirements that must be met under the Standing Orders.

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Bill Teams must clear draft their Financial Memorandum with their Finance Business Partner (FBP) and PCO before the draft Bill and other accompanying documents are submitted for approval to Ministers. The Financial Memorandum is also subject to separate special clearance by the Cabinet Secretary with responsibility for finance. The Finance Programme Management Structure can be found at this link and general information can be found in Saltire at [Finance Business Partners Division](#).

To note, any health-related Bills are not covered by the FBP team because of the split between Health Finance and the rest of SG Finance. Bill Teams would be supported from within the Health Finance structure.

[Bill Handbook, page 80](#)

11. ACCOMPANYING DOCUMENTS

Summary

Rule 9.3 of the Standing Orders requires that a number of documents must be submitted with the Bill on introduction. These are collectively termed “Accompanying Documents” and Bill Teams should ensure they are familiar with the requirements for preparing them.

Key documents for Bill Teams to focus on:

- Policy Memorandum
- Explanatory Notes
- Financial Memorandum
- Delegated Powers Memorandum, and
- Auditor General’s Report (in rare cases)

11.1 Templates for accompanying documentation

Templates for the accompanying documents have been prepared by the Parliament for use by Bill Teams and they are available by opening MS Word under *File – New – Shared – Acc docs*.

It is important that these templates are used and that the guidance they contain is followed. If the clerks in the Scottish Parliaments Legislation Team have to reformat material, this may result in a delay to the introduction of the Bill.

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Bill Teams should avoid adding superfluous material to the Accompany Documents as this is not a requirement of the Standing Orders.

It is best practice to save the documents regularly and to have a system for version control as the templates are developed, particularly because the documents are subject to revision at various points by a number of different people.

Guidance on responsibilities and timings can be found at this [link](#).

[Bill Handbook, page 82](#)

11.4 Financial Memorandum

Rule 9.3.2 of the Standing Orders requires that:

“A Bill must on introduction be accompanied by a Financial Memorandum which sets 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. The Financial Memorandum must also include best estimates of the timescales over which such costs, savings, and changes to revenues would be expected to arise. The Financial Memorandum must distinguish separately such costs, savings, and changes to revenues that would fall upon—

- (a) the Scottish Administration;
- (b) local authorities; and
- (c) other bodies, individuals, and businesses.”

It is essential that the preparation of the Financial Memorandum begins at a very early stage in the Bill process. Financial Memoranda are required so that the Parliament can have the best possible information about the costs and/or savings arising from proposed legislation. Estimates of costs and savings are therefore required regardless of budgetary considerations such as costs being absorbed within existing budgets. Estimates should be comprehensive, and the level of detail should be sufficient to enable the Parliament to come to a view on their robustness. Costings should be provided on both a gross and a net basis. Details of any anticipated savings on existing costs and any related income should be provided. Bill Teams working on tax, employability or social security Bills should contact the Scottish Fiscal Commission (SFC), at info@fiscalcommission.scot to discuss their Financial Memoranda at the Bill planning stage. Almost all costings of tax receipts and social security expenditure into and out of the Scottish Consolidated Fund, affected by Bill policy proposals, should be

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carried out by the SFC. Non-public information on policy can be shared with the SFC to inform discussions on the Financial Memoranda.

Detailed guidance on the preparation and clearance of Financial Memoranda is included in [Scottish Public Finance Manual - Guidance Note 2009/01](#). The Bill Team is responsible for preparing the Memorandum in accordance with this guidance and for clearing it with the portfolio Finance Team before the draft Bill and accompanying documents are submitted to Ministers for approval. The Financial Memorandum is also subject to special separate clearance by the Cabinet Secretary with responsibility for finance.

You can find an example of building up costs at this [link](#).

[Bill Handbook, page 85](#)

11.7 Supplementary or revised Memoranda

A revised or supplementary Explanatory Notes, Financial Memorandum and Delegated Powers Memorandum will need to be produced if a Bill is amended in a relevant way at Stage 2. Further information can be found in chapter 13. The Explanatory Notes are again amended after Royal Assent, for final publication as the Explanatory Notes to the Act (further information can be found in chapter 14).

[Bill Handbook, page 87](#)

12.3.2 Financial Memorandum approval by Cabinet Secretary for Finance

Before the Bill is submitted to the Presiding Officer, Bill Teams must seek formal approval of the Financial Memorandum from the Cabinet Secretary with responsibility for finance. Some Bill Teams seeks this approval in the same submission used to seek the lead Minister's approval of the Bill pack, but it can be sought separately.

[Bill Handbook, page 103](#)

13.3.3 Scrutiny by other committees

Under rule 9.6.1 of the Standing Orders, other "secondary" committee(s) may be required to comment on the Bill to the lead committee. Where this is the case, the Minister in charge of the Bill may be required to attend/participate, supported by officials. The comments from these committees will be taken into account when the lead committee is preparing its report.

The Finance and Public Administration Committee and the Delegated Powers Committee (DPLRC) have specific responsibilities in relation to the scrutiny of Bills. The Standing Orders provide that:

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- Where a Bill contains provisions conferring powers to make subordinate legislation or other delegated powers given to Ministers, the DPLRC consider and report to the lead committee on such provisions (and may also report on any other delegated powers in the Bill).
- The lead committee shall take into account any views submitted to it by the Finance and Public Administration Committee on the Bill's Financial Memorandum

The Finance and Public Administration Committee will scrutinise the Bill's Financial Memorandum, and the level of scrutiny it adopts is likely to correlate to the significance of the financial implications of the Bill.

It is likely that the Finance and Public Administration Committee will adopt one of the following approaches to scrutiny:

- the committee seeks written evidence from organisations financially affected using a standard questionnaire and any responses received are passed directly to the lead committee considering the Bill. This is completed in advance of the lead committee's evidence session with the Minister at Stage 1
- the committee invites written evidence from affected organisations before taking oral evidence from the Bill Team and then producing a report for the lead committee
- the Committee invites written and oral evidence from affected organisations, followed by evidence from the Bill Team, and then produces a report for the lead committee

A formal response to the Finance and Public Administration Committee's report is not usually required but Bill Teams may wish to consider whether there is merit in addressing points raised by the Finance and Public Administration Committee in order that this can be taken into account by the lead committee in its deliberations.

[Bill Handbook, page 110](#)

13.4.1 Amendments

When the need for Government amendments becomes clear, these will be instructed following the same process as for the original Bill. Bill Teams will prepare policy instructions, SGLD will develop legal instructions, and PCO will draft the amendments. The level of Ministerial clearance will depend on the significance of the amendment and involvement of Ministers, but all should be cleared at least in principle with the Minister in charge of the Bill and their general authority to lodge

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purely technical amendments should be obtained in such circumstances where that is necessary.

Importantly, the financial implications of amendments, including non-Government amendments, should be assessed, and cleared as necessary with the relevant Finance Team as well as with the Minister with responsibility for finance. PCO will advise whether a Financial Resolution is likely to be required if one was not already agreed by the Parliament at Stage 1.

Bill Handbook, page 119

13.4.11 Preparing for Stage 3

Bill Teams may need to produce revised documentation before Stage 3 starts, depending on what amendments were made to the Bill at Stage 2. Note the timetable for development of these documents is typically short, and Bill Teams should ensure that the work required to produce the documents is scoped as soon as Stage 2 is complete:

- **Financial Memorandum** - Where amendments have been made at Stage 2 or, following Stage 2, where new/updated financial information becomes available that substantially alters the cost implications of the Bill as described in the original Financial Memorandum, a revised or supplementary Financial Memorandum providing the information required under rule 9.3.2 should be provided to the same timescales as for the revised DPM as set out above. The Scottish Public Finance Manual [Finance Guidance Note 2009/01](#) provides full guidance, but the following general points should be borne in mind:
 - any Government amendments that affect costs should have been cleared in advance with the relevant Finance Team and Ministers. Accordingly, suitable material should already be available for any revised or supplementary Memorandum. Please liaise closely with your Finance Team on the terms of any revision or supplement to the original Memorandum.
 - where a non-Government amendment carries substantial additional costs, it should be possible to draw from the briefing prepared, in consultation with Finance colleagues and Ministers, when the amendment was considered at Stage 2. The Memorandum should offer a fair assessment of the costs together with any other relevant information considered appropriate.

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Scottish Public Finance Manual - Guidance Note 2009/01

This is a publicly available document which can be accessed here:

[FGN2009/01 financial memoranda that accompany Scottish Government bills - Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](http://www.gov.scot/FGN2009/01_financial_memoranda_that_accompany_Scottish_Government_bills_-_Scottish_Public_Finance_Manual_-_gov.scot)

PLU GUIDANCE NOTE FOR BILL TEAMS - STAGE 2

Stage 2 reference guide

Stage 2 is when the lead committee considers amendments to the Bill. The process is complex and has various parts to it.

The following provides background information on the key concepts you will want to be familiar with in your preparations for Stage 2. Further information can be gathered from the [Bill Handbook](#) and Parliamentary Counsel (PCO) also offer Stage 2 training for their Bill teams. **Where necessary, any alternative approaches for Non-Government Bills (NGBs) are noted in green.**

<p>Financial Implications and revised or Supplementary Financial Memorandum (Bill Handbook 13.4.9)</p>	<p>It is important for financial implications of amendments, including non-Government amendments, to be assessed and cleared as necessary with the relevant Finance Team as well as with the Cabinet Secretary with responsibility for Finance. This analysis should be undertaken for NGBs also.</p> <p>If the Bill is amended at Stage 2 to substantially alter any of the costs set out in the Financial Memorandum on introduction, a revised or supplementary Financial Memorandum will need to be lodged whichever is the earlier of:</p> <ul style="list-style-type: none">(a) the tenth sitting day after the day on which Stage 2 ends;(b) the end of the second week before the week on which Stage 3 is due to start. <p>Any Memorandum should be provided, in draft, to the Parliament's clerks at least 3 working days in advance of the deadline. However, where stage 3 is after the minimum gap, this will not be possible.</p> <p>Shadow Bill Teams for NGBs should consider the financial implications of amendments and analyse any revised or supplementary Financial Memorandum if published.</p>
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Scottish Cabinet Decision paper

Finance

1. Brief outline of financial implications with full financial details to be contained in Annex A. In particular make clear whether there is the need to identify funding that is additional to existing budgetary provision.

ANNEX A

Note: This annex must be included with all Cabinet papers and all headings should be retained so that the position on each topic is clear. If there are no considerations or implications under a particular heading, then this should be stated; the heading should not be removed.

KEY ADDITIONAL INFORMATION

Financial Implications

2. Highlight the main financial implications of the proposals including the source of funding. These should be cleared by the Deputy First Minister and Cabinet Secretary for Finance. (Further guidance is provided in [Note 10](#))

Financial Implications (Note 10)

Where there are financial implications, this section should:

- Set out the costs (split into capital/revenue (current), and explain in each case the duration and phasing of the expenditure; this should make clear if the costs increase beyond the current Spending Review period or if other new costs arise;
- Identify the cash and non-cash elements of all resource implications or capital expenditure and identify any set-up costs (for example recruitment or redundancy);
- Indicate whether each element could be accommodated within existing budgets for the current year and provisional budgets for future years, and, if they could, at what cost in other services (this assessment should take account of all known demands on the budget); and
- Where the proposals involve new expenditure, outline the arrangements for evaluating the effectiveness of the new measures after an appropriate period.

The content of this section should be agreed with Financial Management Directorate, and the Cabinet paper must be cleared by the Deputy First Minister and Cabinet Secretary for Finance. [Back](#)

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Resource Implications

1. Where there are financial implications, set out the likely cost (split into capital/current), duration and phasing. Indicate whether this can be accommodated within existing budgets and cite statutory authority for any new expenditure. Consult with Finance unless the implications are restricted to existing delegated authority and no other financial issues arise.

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