



The Scottish Parliament
Pàrlamaid na h-Alba

Finance and Public Administration Committee

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By email

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Dear Audrey

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 Bill Team. Following the evidence session, the Committee agreed to outline the issues arising from its scrutiny of this FM and to draw to your attention a number of areas of concern, which are detailed below. The FPAC also agreed to write separately to the Cabinet Secretary for Justice and Home Affairs and the Presiding Officer regarding our concerns.

Intention to provide a revised 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.

The Committee is of course keen to support and feed into the Criminal Justice Committee’s Stage 1 scrutiny of the Bill. However, we are unable to report to the Committee until a revised FM is provided. As such, we have requested in our letter to the Cabinet Secretary that a revised FM is provided by no later than **Wednesday 1 May 2024**. Nevertheless, we have set out below the issues that have arisen to date to assist your Committee’s evidence-taking.

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 to the Committee's call for views 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 that 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 said 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 the Scottish Government's own consultation on the proposals to be contained in the Bill.

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 are 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, the Committee 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 estimated 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. We have therefore sought the Cabinet Secretary's views on the effectiveness of the Scottish Government's engagement with PS, and have requested 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 and use of framework Bills

The Committee has previously raised concerns about the consistency of FMs presented to it for consideration, and about the use of framework Bills and the costs associated with the use of secondary legislation. Our concerns 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. We are concerned about the inconsistency in the presentation and level of detail included in the FMs presented to us, the guidance and training available to Scottish Government officials involved in the drafting of FMs. The risks associated with the use of framework Bills, and the possible lack of consideration of these risks within the Scottish Government are also matters of concern for the Committee, which we have highlighted in our letters to the Cabinet Secretary and the Presiding Officer, and which we continue to pursue through our regular scrutiny of FMs.

We have asked the Cabinet Secretary to provide details of how the Scottish Government assessed the presentation and description of figures in the FM assessed to be in accordance with the approach taken by other FMs. We have also requested information on the increased use of framework Bills, given the Committee's concerns about overspending and inefficiencies associated with this type of legislation.

The Committee will write again to the Criminal Justice Committee once we have had an opportunity to examine the updated FM. In the meantime, we hope this letter provides a helpful update on our scrutiny to date.

Yours sincerely

Kenneth Gibson MSP
Convener
Finance and Public Administration Committee