



The Scottish Parliament
Pàrlamaid na h-Alba

Finance and Public Administration Committee

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By email

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Dear Presiding Officer

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 the evidence session, the Committee agreed to draw to your attention a number of areas of concern that have arisen during the Committee's scrutiny of this FM, and other recent FMs for Scottish Government Bills. The FPAC also agreed to write separately to the Criminal Justice Committee and the Cabinet Secretary for Justice and Home Affairs regarding the issues arising from its scrutiny of the FM and recurring concerns with the consistency and quality of FMs presented to it for consideration.

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.

The Committee is unclear why the Scottish Government intended to bring forward a revised FM after Stage 2 rather than providing updated figures to inform the Committee's evidence session at Stage 1 which was held 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 clearly undermined the ability of the Committee to 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.

The Committee is of course keen to undertake effective consideration of FMs and feed robust evidence and recommendations into the parliamentary scrutiny of Bills at Stage 1. However, we are unable to do so unless we are provided with an FM which sets out best estimates of the costs, savings, and changes to revenues to which the provisions of the Bill would give rise, as set out in rule 9.3 of the Standing Orders. The initial suggestion of providing an updated FM following Stage 2 would have rendered the Committee unable to contribute in any meaningful way to the lead Committee's Stage 1 scrutiny of the Bill. We have therefore requested that an updated FM be provided in time for us to examine it and report ahead of the Stage 1 debate.

As you may be aware, this is not the first time that the Committee has raised concerns about the quality and consistency of FMs presented to it for consideration. Our letter to the Scottish Government of [8 February 2024](#) regarding the FM for the National Care Service (Scotland) Bill (NCS Bill) sets out our significant concerns regarding the consistency in presentation of figures in FMs. In relation to the NCS Bill, the letter also details our concerns at the rounding of figures to the nearest million and use of CPI as a measure of inflation rather than the customary GDP deflator, which is usually used by the Government in its figures, including in the Scottish Budget.

We were therefore concerned to see another unusual approach taken in relation to the FM for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill where figures were 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 as to why the decision was taken to present some estimated costs at 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 variability may arise.

You may also be aware that the FPAC has ongoing concerns regarding the Scottish Government's increased use of 'framework' Bills and the significant challenges in carrying out effective scrutiny of cost estimates associated with legislation arising

from 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. This includes our lack of confidence that figures presented are an accurate reflection of the final costs of the Bill and considerable challenges for this Committee to scrutinise the financial implications of policies as they continue to develop through beyond Stage 1. We make similar points in relation to the FMs for two other 'framework' bills currently under consideration by Parliament - the Circular Economy (Scotland) Bill and the Agriculture and Rural Communities (Scotland) Bill.

The introduction of four 'framework' bills currently under consideration by Parliament presents significant cumulative risks including in relation to overall affordability and inefficiency, as well as serious challenges for parliamentary scrutiny. Therefore, in our letter to the Cabinet Secretary on the Police (Ethics Conduct and Scrutiny) Bill, we have sought detail regarding the process of consideration given to risks of overspending and inefficiencies prior to the introduction of a Bill to Parliament, given the concerns we have identified in relation to framework Bills. We further understand that a number of other committees have raised similar concerns regarding 'framework' bills.

Given the impact on the ability of Parliament to scrutinise legislation effectively, the Committee would welcome any support you can provide to encourage the Scottish Government to improve the quality, accuracy and consistency of FMs, and to reduce its use of 'framework' bills to only where absolutely necessary. I would of course be happy to discuss the Committee's concerns in more detail if it would be helpful.

Yours sincerely

Kenneth Gibson MSP
Convener
Finance and Public Administration Committee