



The Scottish Parliament
Pàrlamaid na h-Alba

Finance and Public Administration Committee

Audrey Nicoll MSP
Convener
Criminal Justice Committee

By email

All correspondence c/o:
Finance and Public
Administration Committee Clerks
Room T3.60
The Scottish Parliament
Edinburgh
EH99 1SP

Tel: 0131 348 5219
Textphone: 0800 092 7100
FPA.committee@parliament.scot

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Dear Audrey

Financial Memorandum for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill

I last wrote to you in regard to the Finance and Public Administration (FPA) Committee's scrutiny of the Financial Memorandum (FM) for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill on [16 April 2024](#), following evidence we heard from the Bill Team at our meeting on [26 March 2024](#). The Committee took further evidence on the FM from the Cabinet Secretary for Justice and Home Affairs at its meeting on [7 May 2024](#). Following the evidence session, the Committee agreed to provide a further update on the latest evidence received, in order to continue to inform the Criminal Justice Committee's Stage 1 scrutiny of the Bill.

Intention to provide a revised FM

As you are aware, the Bill Team informed the Committee on 26 March 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.

Following this evidence session, the Committee [wrote to the Cabinet Secretary](#) on 16 April outlining our concerns surrounding the Scottish Government's intention to bring forward a revised FM for the Bill after Stage 2, rather than providing updated figures to inform the Committee's initial evidence session on the FM. We also requested that an updated FM be provided by 1 May 2024. A [response from the Cabinet Secretary](#) was received on 22 April 2024, which includes updated estimated costs.

During our evidence session on 7 May, the Committee pursued further detail from the Cabinet Secretary as to why the initial decision was taken to provide a revised FM after Stage 2. The Cabinet Secretary stated that–

“it is my understanding that there is no formal mechanism to revise a financial memorandum in advance of stage 2 of a bill. However, ministers are beholden to keep committees updated. I have written at length to the committee and would have had every intention of doing so, irrespective of whether officials had been called to give evidence”.

The Cabinet Secretary went on to say that she is bound by the provisions set out in the Standing Orders regarding the provision of revised FMs following the Stage 2 process. The Committee notes that Rule 9.7.8B of the Standing Orders states that a revised FM is not required after Stage 2 unless a Bill "is amended at Stage 2 so as to substantially alter any of the costs, savings, and changes to revenues set out in the Financial Memorandum that accompanied the Bill on introduction". The Committee is therefore concerned that, should the conditions set out in the Standing Orders for the provision of a revised FM after Stage 2 not have been met, a revised FM may not have been provided for consideration. Indeed, had we not taken evidence from the Bill Team on 26 March, the Committee and indeed your Committee and Parliament, may not have received these updated figures to facilitate scrutiny of the costs associated with the Bill during its Stage 1 scrutiny. We will continue to set out our expectations around the provision of updated cost estimates during the passage of legislation at Stage 1.

Potential further cost changes and impact on frontline policing

In evidence on 7 May, the Cabinet Secretary noted that the costs associated with the Bill's provisions may be subject to further change in the intervening period to October 2024, when Stage 2 is expected to take place. Such changes, she suggested, may be required to reflect inflationary changes and upcoming pay settlements. When asked whether the increased costs associated with the Bill would impact on operational policing, the Cabinet Secretary responded that the increased costs represent about 0.2% of the overall Police Scotland (PS) budget. She went on to say that the most recent figure for PS's investment in functions of training is around £18 million, and that the increased costs associated with the Bill are “manageable in terms of PS's overall budget”.

Accuracy of costs and stakeholder engagement

As noted above, the Cabinet Secretary's response of 22 April to the Committee's letter on the FM provides updated cost estimates for the Bill. The updated overall

total revised costs are estimated to be £5,800,069. Updated total one-off costs are estimated to be £2,356,134, compared to £801,134 in the original FM, and updated total recurring costs are estimated to be £3,443,935, compared to £613,340 in the FM.

During the Committee's evidence session on 26 March, Scottish Government officials stated that PS's change of position on costs was due to it having more clarity regarding the statutory duty the Bill would place on the Chief Constable to ensure that all officers have undertaken training and also due to PS's adoption of a more robust approach involving the consideration of potential cost impacts across the organisation. They went on to explain that PS's change of position arising from this statutory duty on the Chief Constable was a "key point" that 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 Cabinet Secretary's response states that—"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."

When asked in evidence if there had been a miscommunication between the Scottish Government and PS with regards to the statutory duty on the Chief Constable, the Cabinet Secretary stated that "the fundamental change to the bill's policy intentions of taking an existing code of ethics and putting it in statute and placing a new duty on the chief constable have been well communicated". The Cabinet Secretary went on to state that—

"the initial understanding between my officials and Police Scotland was that, bearing in mind that there were existing training arrangements and an existing code of ethics, those costs would be absorbed. Police Scotland revised its position because it has taken constructive steps internally to understand more, and earlier, about the impacts and costs of legislation for Police Scotland as a whole. ... because of the detailed wording of the bill, which means that the code will be strengthened by being put on a statutory basis and that the duties of the chief constable will be strengthened, Police Scotland wants to strengthen its training arrangements".

During the 26 March evidence session with the Bill Team, and in our subsequent letter to the Cabinet Secretary, the Committee raised concerns about the effectiveness of Scottish Government engagement with PS both prior to publication of the FM and since the Bill had been introduced. The Committee queried whether, given the difference in estimated costs provided by PS and in the FM, PS was given sufficient information to provide full cost estimates as the Bill's drafting developed. In our letter to the Cabinet Secretary, the Committee sought the Cabinet Secretary's views on the effectiveness of the Scottish Government's engagement with PS, given that the full extent of PS's new cost estimates did not become clear until the Committee published its written submissions. In evidence, the Cabinet Secretary explained that—

“last autumn, through the Scottish police consultative forum, Police Scotland intimated that its understanding was changing and that it felt that the costs—especially those relating to training and other matters—had been underestimated. However, at that time, Police Scotland still had to go through its internal approval process with regard to what its view on the specific numbers was”.

The Cabinet Secretary stated that, despite intimating to the Scottish Government in September 2023 that the Bill’s costs were likely to be higher than originally expected, PS provided its revised cost estimates to the Scottish Government on 6 November 2023, two days before the responses to the FPA Committee’s call for views on the FM was published.

Scottish Government scrutiny of revised stakeholder cost estimates

The updated cost estimates provided by the Cabinet Secretary show that these figures have been reached by combining the costs set out in the original FM with the updated estimates provided by PS and the Scottish Courts and Tribunal Service. At the evidence session on 7 May, the Committee asked for further detail as to how the Scottish Government had scrutinised the costs provided by PS in order to ascertain their robustness and accuracy. The Cabinet Secretary stated that interrogation of the figures provided by stakeholders “took place over a period both before and after the introduction of the bill”, and that the Scottish Government engages with partners through forums such as the Scottish police consultative forum, as well as undertaking engagement with, for example, the Metropolitan Police and the Home Office. She went on to state that—

“I expect my officials to go and interrogate those revised costs, because it is crucial that we have a shared and very detailed understanding of why those costs have been revised. In March, on the basis of that interrogation process, we came to the conclusion that we accepted the new information that Police Scotland had provided”.

When asked specifically about the increased training costs associated with the Bill, and whether PS could absorb any of these costs within existing resources, the Cabinet Secretary stated that “training is entirely an operational matter for Police Scotland. I am, of course, well within my rights to test information that I am presented with by Police Scotland, but I accept that we should continue to invest in the training of new and existing police officers and staff”.

FM consistency and use of framework Bills

The Committee’s 16 April letter to the Cabinet Secretary sets out our concerns surrounding inconsistencies in the presentation and level of detail included in FMs presented to the Committee, the guidance and training available to Scottish Government officials involved in the drafting of FMs, and the risks of overspending and inefficiencies associated with the use of framework Bills.

In evidence on 26 March, the Bill team stated that “The legislation is an enabling and framework bill, and a number of provisions will be set out in secondary legislation.”

However, in response to the Committee's letter, the Cabinet Secretary stated "I do not consider the Police Ethics etc Bill to be a framework bill. The Bill is an amending one". In evidence, the Cabinet Secretary confirmed that the Scottish Government does not consider the Bill to be a framework Bill, stating that "The vast majority of the substantial provisions are on the face of the bill. Only four of the 16 substantive provisions could be described in any way as enabling. ... The bill amends the Police, Public Order and Criminal Justice (Scotland) Act 2006 and the Police and Fire Reform (Scotland) Act 2012." The confusion around this issue is unhelpful.

The Committee had queried in its letter to the Cabinet Secretary and again during evidence why some of the figures provided in the original FM were presented as rounded estimates and others as exact figures (to the nearest £). We also asked why costs were presented as either "material" or "immaterial", with a figure of £10,000 being used as a benchmark for "materiality", given this was not a terminology and method we have previously seen in FMs. The updated costs provided by the Cabinet Secretary are presented as precise figures. In evidence, the Cabinet Secretary and supporting officials explained that precise figures were used where external organisations had provided estimated costs, and those estimated costs had been "inserted straight into the financial memorandum as they were." They went on to state that—

"When we were building up other parts of the financial memorandum within Government, ... we took the view that it would not be meaningful to estimate to the nearest pound, so we took a materiality view of estimating to the nearest £10,000. As you have observed, that led to a slight difference in approach in some of the numbers."

A response to the Committee's letter to the Cabinet Secretary was also received from the [Minister for Parliamentary Business](#) on 18 April 2023. The letter addresses the broader points raised in the Committee's letter regarding the consistency and accuracy of FMs, training and resources for Bill Teams, and the use of framework bills. The Committee intends to continue to pursue our concerns around the accuracy of FMs, use of framework legislation, and conventions for providing updated estimated costs following FM publication with the Permanent Secretary during evidence on 21 May and in our forthcoming response to the Minister for Parliamentary Business regarding guidance and expectations around the quality and consistency of FMs.

The Committee trusts that its views regarding the cost estimates and, more generally, the approach to this Financial Memorandum will inform your forthcoming evidence Session with the Cabinet Secretary.

Yours sincerely

Kenneth Gibson MSP
Convener
Finance and Public Administration Committee