



The Scottish Parliament  
Pàrlamaid na h-Alba

## Finance and Public Administration Committee

Stuart McMillan MSP  
Convener  
Delegated Powers and Law Reform Committee

**31 October 2024**

Dear Stuart

### Framework Legislation and Henry VIII Powers

Thank you for the opportunity to submit views to the Delegated Powers and Law Reform Committee's inquiry into the use of framework legislation.

As you are aware, the Finance and Public Administration Committee (the Committee) is responsible for scrutinising Financial Memorandums (FMs) to Bills. Our response, therefore, focuses on the impact of framework legislation on parliamentary scrutiny as it pertains to FMs.

Under Standing Orders, FMs should set out best estimates of the costs, savings, and changes to revenues arising from a Bill, as well as relevant margins of uncertainty for these estimates. The impact of framework legislation on financial scrutiny has been an area of concern for the Committee throughout this session. This approach, as well as the use of co-design processes to finalise exact policy during and beyond the passage of the relevant primary legislation, presents significant challenges for effective financial scrutiny. Our concerns in this area are detailed in our reports and correspondence on the FMs for Bills such as the National Care Service (Scotland) Bill, the Circular Economy (Scotland) Bill, the Agriculture and Rural Communities (Scotland) Bill<sup>1</sup> and the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill<sup>2</sup>.

Our report on the FM for the National Care Service (Scotland) Bill, published in December 2022<sup>3</sup>, sets out our view that the original FM did not provide the

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<sup>1</sup> [Letter from the Convener to the Convener of the Rural Affairs and Islands Committee of 19 February 2024 \(parliament.scot\)](#)

<sup>2</sup> There was some confusion about whether this is in fact a framework bill, with Scottish Government officials first indicating to the Committee that it is a framework bill, and the relevant Cabinet Secretary later advising the Committee it is not.

[Letter from the Convener to the Convener of the Criminal Justice Committee of 16 May 2024 \(parliament.scot\)](#)

<sup>3</sup> [Report on the Financial Memorandum for the National Care Service \(Scotland\) Bill \(sp-bpr-en-prod-cdnep.azureedge.net\)](#)

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Committee with enough detail on costs to allow it to fully assess or scrutinise the financial implications of the Bill. In the report, we state that “the Scottish Government should not bring forward primary legislation unless it is based on a full and proper business case to allow stakeholders and the Parliament to scrutinise and take a view on the full cost estimates, ranges of costs, and margins of uncertainty”. We also raise concerns regarding the use of secondary legislation for setting out a significant level of detail on how the new National Care Service will work, noting that this approach “limits scrutiny and does not provide the greatest opportunity to propose changes and shape its provisions”. In further correspondence on the FM<sup>4</sup>, we noted that “the longer the process of co-design continues, the greater the risk of delays to implementation of the Bill and associated increases in costs”.

Concerns related to sequencing and ongoing co-design during a Bill’s passage were also explored in our report on the FM for the Climate Change (Scotland) Bill<sup>5</sup>. As noted in that report, the increasing use of framework bills to seek ‘enabling’ powers to be used at some later date, and following a co-design process, means that providing Parliament with an FM that sets out best estimates of the costs, savings and changes to revenues is significantly hampered. Our report states that we do not disagree with the principles of co-design or engaging with stakeholders on policy proposals, both of which support better outcomes and improve decision making. We are, however, “unconvinced by the argument that co-design and engagement must follow on from the legislative process instead of being used to inform and refine policy proposals in advance of legislation being introduced”. Our scrutiny of the FM raised wider concerns regarding the risk to the Scottish Budget of passing framework bills with no clear identification of the estimated costs of implementation.

Following scrutiny of other framework legislation, including the Agriculture and Rural Communities (Scotland) Bill and the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill, the Committee wrote to the Presiding Officer<sup>6</sup> expressing our ongoing concerns regarding the increased use of such bills and the significant challenges in carrying out effective scrutiny of cost estimates associated with legislation arising from this approach. In our letter, we noted that “the introduction of four ‘framework’ bills currently under consideration by Parliament presents significant cumulative risks including in relation to overall affordability and inefficiency”.

We also exchanged correspondence with the Minister for Parliamentary Business, setting out clearly our expectations in relation to the quality and consistency of the information presented in FMs, including for framework legislation<sup>7,8,9</sup>. In related correspondence to the Permanent Secretary, we raised concerns and sought reassurances regarding the Scottish Government’s assessment, management and mitigation of risks that could additionally arise as a result of the Committee being

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<sup>4</sup> [Letter from the Convener to the Minister for Social Care, Mental Wellbeing and Sport of 8 February 2024 \(parliament.scot\)](#)

<sup>5</sup> [Report on the Financial Memorandum for the Circular Economy \(Scotland\) Bill \(parliament.scot\)](#)

<sup>6</sup> [Letter from the Convener to the Presiding Officer of 16 April 2024 \(parliament.scot\)](#)

<sup>7</sup> [Letter from the Minister for Parliamentary Business to the Convener of 18 April 2024](#)

<sup>8</sup> [Letter from the Convener to the Minister for Parliamentary Business of 25 June 2024](#)

<sup>9</sup> [Letter from the Minister for Parliamentary Business to the Convener of 26 July 2024](#)

unable to scrutinise the full estimated costs and savings of co-designed Bills during their passage through Parliament<sup>1011</sup>.

In his response, the Minister for Parliamentary Business has committed to updating guidance and putting in place enhanced training for Bill teams, to improve the quality of FMs, which is welcome.

As evidenced in our FM scrutiny, the use of framework bills limits the Parliament's ability to scrutinise the costs associated with legislation. Discussions with our counterparts in Wales, via the Interparliamentary Finance Committee Forum, have shown this issue is not restricted to Scotland, but instead appears to be part of wider trend throughout the UK legislatures and beyond. We therefore welcome this timely inquiry into the use of framework legislation and its impact on scrutiny.

We look forward to reading your Committee's findings in due course.

Yours sincerely,

**Kenneth Gibson MSP**  
**Convener**

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<sup>10</sup> [Letter from the Convener to the Permanent Secretary of 26 June 2024 \(parliament.scot\)](#)

<sup>11</sup> [Letter from the Permanent Secretary to the Convener of 31 July 2024 \(parliament.scot\)](#)