

Finance and Public Administration Committee
16th Meeting 2024 (Session 6)
Tuesday 7 May 2024

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

Purpose

1. The Committee is invited to take evidence in relation to the Financial Memorandum (FM) on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill from the Cabinet Secretary for Justice and Home Affairs and the following Scottish Government officials:
 - Donald McGillivray, Director of Safer Communities;
 - Steven Bunch, Bill Team Leader.
2. The purpose of this session is to examine the Scottish Government's response to the Committee's letter regarding the FM for the Bill which contains updated estimated costs.
3. This paper provides background information on the Committee's scrutiny of the FM to date and an overview of the Scottish Government's response to the Committee's letter.

Background

4. The [Police \(Ethics, Conduct and Scrutiny\) \(Scotland\) Bill](#) was introduced on 6 June 2023. As introduced, the Bill will require the police to have a code of ethics, make changes relating to the handling of police conduct, increase the functions of the Police Investigations and Review Commissioner and introduce an advisory board for the Commissioner. The Scottish Parliament Information Centre has published a briefing on the Bill, which is available on the [Scottish Parliament website](#).
5. The Finance and Public Administration Committee took evidence on the Bill's FM from the Bill Team at its meeting on [26 March 2024](#). Following the evidence session, the Committee agreed to [write to the Cabinet Secretary for Justice and Home Affairs](#) to highlight a number of concerns arising from the evidence session with the Bill Team. The letter, which is included at **Annexe A**, also details wider concerns that the Committee has raised in regard to this and other FMs, including consistency of presentation, level of detail, and risks associated with the use of framework bills.

6. The Committee also agreed to write separately to the [Criminal Justice Committee](#) (the lead Committee for consideration of the Bill) to outline the issues arising from its scrutiny of this FM, and to the [Presiding Officer](#) regarding recurring concerns with the consistency and quality of FMs presented to it for consideration.
7. [The Cabinet Secretary responded](#) to the Committee's letter on 22 April 2024. The letter from the Cabinet Secretary responds to some of the points raised in the Committee's letter and provides updated estimated costs associated with the Bill. The Cabinet Secretary's response is attached at **Annexe B**.
8. A response to the Committee's letter to the Cabinet Secretary was also received from the [Minister for Parliamentary Business](#) on 18 April 2024. 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 has agreed to consider these broader issues and its suggested response to the Minister at a future meeting following discussions between the clerks and Scottish Government officials.
9. On 25 April 2024, the Criminal Justice Committee [wrote to the Cabinet Secretary](#) seeking clarification on the updated costs provided and requesting that all the financial information be provided within one document. A copy of this letter is available at **Annexe C**. The Cabinet Secretary responded to the Criminal Justice Committee's letter on 1 May 2024. The response is attached at **Annexe D**.

Intention to provide an updated FM

10. 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". The officials explained that this was due to the difference between the cost estimates provided in the original FM and those set out in the written submissions received by the Committee in response to its call for views on the FM – principally the response received from Police Scotland (PS). Officials explained that their understanding of the process, which was informed by the Bill handbook, was to bring forward revisions to FMs after Stage 2.
11. In its letter to the Cabinet Secretary, the Committee queried why Scottish Government officials intended to bring forward a revised FM after Stage 2 rather than providing the Committee with updated figures ahead of the evidence session on 26 March, noting that the Scottish Government had been aware that the figures presented in the FM were incorrect for around 6 months.
12. In response to the Committee's letter, the Cabinet Secretary stated that—

“My officials stated the Scottish Government would revise the FM in light of new evidence received by the Finance and Public Administration Committee

in their call for views and correctly identified that this would take place after Stage 2. ... There is no formal process in the Standing Orders or any known convention in place that provides for revised FMs to be made available earlier than this.”

13. The Committee requested a copy of the Bill handbook which is provided to support Bill teams on the development and passage of legislation. The response received from the Minister for Parliamentary Business includes extracts from the Bill handbook and associated guidance relevant to the development of FMs.

Accuracy of estimated costs

14. The costs provided in the FM estimate the Bill’s total annual ongoing costs to be between £520,424 and £1,414,474. However, in its written evidence to the Committee, PS stated that the figures provided in the FM are “significantly underestimated”. PS estimated the projected financial impact of the Bill to cost £4,985,595.
15. Updated cost estimates are provided in the Cabinet Secretary’s response to the Committee’s letter on the FM. 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.
16. During evidence, Scottish Government officials explained that three main cost areas highlighted in PS’s evidence account for the difference in estimated costs. These are—
1. Staff costs
 2. Legal costs for former officers
 3. Training costs
17. 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”. The Cabinet Secretary’s response to the Committee’s letter states that “The Scottish Government accepts PS’s rationale for updating the information previously provided to the Bill team”.
18. In its response to the Committee’s call for views, PS stated that it “is unable to deliver the additional provisions of the Bill and associated essential training requirements within existing budgets”. It estimated that the Bill’s police conduct provisions incur total training costs of £1,517,000, plus recurring costs of £758,000.
19. In evidence, Scottish Government officials stated that PS had indicated in their initial engagement that training costs associated with the Bill’s provisions would

be absorbable, but PS's position had changed since the FM's publication as it has adopted a more robust approach involving the consideration of potential cost impacts across the organisation.

20. 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 training, and "that key point was unknown to Police Scotland" at the time of the Scottish Government's consultation. The Committee's letter to the Cabinet Secretary queried why PS was not given sufficient information to provide full cost estimates as the Bill's drafting developed.
21. During evidence, Scottish Government officials stated that, with regards to costs to PS associated with training, they were 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".
22. The Cabinet Secretary's response to the Committee 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."
23. The letter goes on to state that "PS reconsidered their position after the Bill's introduction noting the Bill's requirement that the Chief Constable take all steps necessary to ensure that constables have read and understand the Code" and that, given the "very real need to ensure that constables are provided with rigorous training on their professional ethics, the SG accept the costs attributable to the training on the code of ethics and duty of candour."

Stakeholder Engagement

24. The Committee's letter to the Cabinet Secretary highlighted concerns around the effectiveness of Scottish Government engagement with PS and other stakeholders both prior to publication of the FM and since the Bill had been introduced.
25. The Committee's concerns around the Scottish Government's engagement with stakeholders arose from comments made by the Bill Team that PS were not made aware of the statutory duty the Bill would place on the Chief Constable with regards to training. Furthermore, the Committee expressed concern that Scottish Government officials were unaware of the full extent to which PS's estimates differed from those included in the FM until the committee's call for views was published, despite being made aware through the Scottish Police Consultative

Forum in September 2023 that PS had estimated that the Bill could have a substantially greater cost to them than the FM had identified.

26. The Committee's letter sought the Cabinet Secretary's views on the effectiveness of the engagement undertaken by the Scottish Government during the preparation of the FM. The letter also asked that details of the engagement undertaken between PS, Scottish Government officials and other relevant stakeholders be provided alongside the updated costs.

27. In her response to the Committee's letter, the Cabinet Secretary states—

“I have full confidence in the Scottish Government's engagement with PS at all levels, whilst maintaining the operational independence of Police. The Bill team hosted several meetings with policing partners to consider the legislative proposals and at each meeting stakeholders were asked to provide data that would help to clarify the financial implications of the proposals and information was exchanged frankly.”

28. The response confirms that Scottish Government officials were informed that costs were considered to be greater than those identified in the FM at the Scottish Police Consultative Forum in September 2023, and states that officials continued to engage with PS with regard to the cost differences following its provision of evidence to the Committee's call for views.

Consistency of FMs

29. The FM explains that where costs are not expected to exceed £10,000, no full costed estimates are provided, and states that “the figure of £10,000 has been used as a default if there will be an immaterial but positive increase in resources.”

30. The Committee expressed concerns regarding this approach in its letter to the Cabinet Secretary, stating that it was—

“concerned to see costs in this FM being 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.”

31. No reference is made to ‘material’ and ‘immaterial’ costs in the updated costs provided by the Cabinet Secretary.

32. The Committee also questioned why some of the estimated costs included in the FM were presented as precise figures (to the nearest £1) and others as rounded estimates. The letter notes that this approach also appears to represent an

inconsistency in the Scottish Government’s approach to the drafting of FMs, noting that the Committee’s preference, as set out in Parliamentary Bill Guidance, is for margins of uncertainty to be used where uncertainties arise. The updated costs provided by the Cabinet Secretary are presented as precise figures.

33. The Minister for Parliamentary Business’s response to the Committee’s letter on the FM states that—

“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.”

34. The Minister’s response goes on to state that “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.”

Use of Framework Bills

35. During the 26 March evidence session with the Bill Team, the Committee asked whether risks of overspending and inefficiency associated with framework Bills are given consideration during the drafting process. The Bill Team stated that they were not aware of any such discussions, explaining that the decision to present a framework Bill was based on judgements about the best way to implement the intention of the legislation, but that the impact of framework legislation in general was not considered.

36. The Cabinet Secretary’s response states that “whilst noting there is no definition of a framework bill, I do not consider the Police Ethics etc Bill to be a framework bill”. This is in contrast to the evidence previously provided by the Bill Team, who stated that “the legislation is an enabling and framework bill, and a number of provisions will be set out in secondary legislation.”

Next steps

37. Following the evidence session with the Cabinet Secretary, the Committee will consider any next steps in relation to its scrutiny of the FM for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

**Committee Clerking Team
May 2024**

Letter from the Convener to the Cabinet Secretary for Justice and Home Affairs of 16 April 2024

Dear Cabinet Secretary

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 this evidence session, the Committee agreed to draw to your attention a number of areas of concern, details of which are provided below. The FPAC also agreed to write separately to the Criminal Justice Committee to outline the issues arising from its scrutiny of this FM, and to the Presiding Officer regarding recurring concerns with the consistency and quality of FMs presented to it for consideration.

Intention to provide an updated 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. 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.

We note that the Scottish Government now intends to bring forward an updated FM as soon as possible, in order for the Committee to be able to feed

into the lead Committee's Stage 1 scrutiny of the Bill, and we therefore ask that an updated FM is provided by no later than Wednesday 1 May 2024.

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 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 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 stated 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 its own consultation.

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 were 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, Committee Members 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 had estimated that 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.

During the Committee's 2023 inquiry into effective decision-making, we sought clarification about how the Scottish Government assesses the quality of its engagement across the different policy areas in Government to identify any areas for improvement. The Deputy First Minister highlighted the role of its Policy Profession Curriculum and Participation Framework in supporting effective engagement. While we note that Scottish Government officials had "extensive discussions with our policing partners" to inform the FM costs, **we seek your views on the effectiveness of this engagement given the vastly different cost estimates provided by PS in written evidence which officials were previously unaware of, and the evidence heard by the Committee as set out above.**

We also seek 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

The Committee has previously raised concerns about the consistency of FMs presented to it for consideration, including in its letter of [8 February 2024](#) to the

Scottish Government regarding the FM for the National Care Service (Scotland) Bill. We were therefore concerned to see costs in this FM being 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 why the decision was taken to present some estimated costs as 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 uncertainties arise. **We therefore seek details of how you assessed, prior to laying this Bill in Parliament, whether the presentation and description of figures in the FM accorded with the approach taken by other FMs.**

The Committee asked Scottish Government officials whether templates are available to assist with consistency in the drafting of FMs, what guidance they are able to access, and what training they are required to undertake. Scottish Government officials explained that templates are used for drafting FMs, and that guidance is available in the Bill Handbook This is intended to be a ‘living document’, which allows it to be regularly updated. Scottish Government officials also stated that training is delivered through eight 1-hour sessions, and that the Scottish Government’s Parliamentary Liaison Unit is responsible for providing this training. The Committee has some concerns regarding the adequacy of current guidance, templates and training available to officials involved in the drafting of FMs and that this may be a contributory factor to the Committee continuing to be presented with FMs that are inconsistent in presentation and level of detail. As noted above, we plan to pursue this further with the Permanent Secretary when he gives evidence in May 2024.

Use of framework Bills

As you may be aware, the FPA Committee has ongoing concerns regarding the increasing use of framework Bills and the significant challenges for effective scrutiny of cost estimates associated with legislation presented by 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. During the 26 March 2024 evidence session with the Bill Team, the Committee asked whether consideration is given to risks of overspending and inefficiency associated with framework Bills during the drafting process. The Bill Team responded that they were not aware of any such discussions, stating that the decision to present a framework Bill in this case was based on judgements about the best way to implement the intention of the legislation, but that the impact of framework legislation in general was not considered. **We therefore seek details of the process of consideration given to risks of overspending and inefficiencies prior to the introduction of a Bill to Parliament, given the concerns the Committee has identified in relation to framework Bills.**

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The impact of framework Bills in limiting Parliamentary scrutiny is an issue I know other Conveners are also concerned about and one which we will continue to pursue.

The Committee looks forward to receiving your response to this letter and the updated FM by 1 May 2024.

Yours sincerely

Kenneth Gibson MSP
Convener
Finance and Public Administration Committee

Letter from the Cabinet Secretary for Justice and Home Affairs to the Convener of 22 April 2024

Dear Convener

I am writing to respond to your letter of 16 April 2024 regarding the Financial Memorandum (FM) for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill and the evidence session you had with the Scottish Government Bill team on 26 March 2024.

My response is confined to the issues specific to my Bill taking account of the new evidence identified during Stage 1, principally from Police Scotland (PS). The Minister for Parliamentary Business has addressed the more general points you have raised in his separate letter of 18 April 2024.

My officials stated the Scottish Government would revise the FM in light of new evidence received by the Finance and Public Administration Committee in their call for views and correctly identified that this would take place after Stage 2. The Minister for Parliamentary Business confirms in his letter that there is no formal process in the Standing Orders or any known convention in place that provides for revised FMs to be made available earlier than this.

During their evidence, officials explained the methodology used for developing the FM and confirmed that stakeholders were asked to provide data that would help to estimate the financial implications of the Bill. The information within the FM was therefore derived from source by the organisations directly affected by the Bill provisions, and this was complemented by desk-based research.

The Scottish Government accepts PS's rationale for updating the information previously provided to the Bill team, and more is said about that below. I wish to make clear that PS were aware of the policy intent and broad statutory duties of the Bill, however, as PS state in their response to your Committee's call for evidence, "*costs could not be accurately quantified until the text of the Bill was published*". It should also be noted that in the considerable time between the Bill's introduction on 6th June 2023 and PS's views being published on 8 November, was also during a period of extremely challenging inflationary pressures and the uprated pay settlement for Police Officers.

In terms of the effectiveness of the Bill team's engagement with PS, I have full confidence in the Scottish Government's engagement with PS at all levels, whilst maintaining the operational independence of Police. The Bill team hosted several meetings with policing partners to consider the legislative proposals and at each meeting stakeholders were asked to provide data that would help to clarify the financial implications of the proposals and information was exchanged frankly. PS

state in their evidence that “contact was maintained with the Scottish Government Policy Team to explore potential costs”. This engagement helped PS better assess the costs to respond to the call for evidence.

Officials were informed at the Scottish Police Consultative Forum in September 2023 that costs were considered greater than the FM had identified. On 6th November 2023, PS informed officials of their Committee response which was published on the 8th. Following the provision of PS’s evidence my officials continued to engage with them to understand the differences.

Let me now address the substantive elements of the cost difference:

Code of Ethics / Duty of Candour

There is already a non-statutory code of ethics for policing in Scotland, which sets out the standards of those who contribute to policing in Scotland, and which will form the basis for the statutory code proposed in the Bill. The duty of candour which is also an existing part of police ethics because police are public servants, is also proposed to become statutory. 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.

PS reconsidered their position after the Bill’s introduction noting the Bill’s requirement that the Chief Constable take all steps necessary to ensure that constables have read and understand the Code. Whilst we expect that many of the steps necessary to fulfil that duty are already in place in the existing professional ethics training, the inclusion of this duty on the Chief Constable caused PS to revise their training costs because, in their view, “*a robust regime of training*” is required to enable the Chief Constable to ensure statutory compliance. Given the importance of this part of the Bill and the very real need to ensure that constables are provided with rigorous training on their professional ethics, the SG accept the costs attributable to the training on the code of ethics and duty of candour.

Costs in relation to sections 2 and 3 were assessed in the Financial Memorandum as £0.

Costs are now £ 1,522,000 one–off and £793,500 recurring assessed as follows:

1. One-off costs for:
 - a. Officer training £1,100,000 and,
 - b. Staff training £417,000
 - c. Training specialist £35,000

This totals £1,552,000 in one off costs to PS.

2. Recurring costs:

- a. Officer training £550,000
- b. Staff training £208,500
- c. Training specialist “ad hoc” £35,000

This totals £793,500

3. PS set out costs for training specialist “champions, advisors and coordinators” initially and then “ad hoc” recurring. The costs are included in the numbers above.

PS also assess additional administrative costs to ensure statutory compliance. Costs for drafting, consulting and marketing are unknown by PS.

Misconduct procedures for former officers (cost on individuals)

PS and the Scottish Police Federation now say the costs are higher than those presented to the Scottish Government prior to introduction. They state there is potential for more cases (29 instead of 14) and the legal costs are greater (£48,000 instead of £28,000). This then means when the changes proposed in the Bill are put in place that the total cost is £1,392,000 but only if all officers seek legal representation.

The Bill does not stipulate a requirement for legal representation, however, there could be costs incurred by individuals who seek legal support to attend a hearing after they have retired that are not likely to be covered by police staff associations. This would mean that individual retired officers who sought legal representation would incur costs of approximately £48,000.

Costs were assessed in the Financial Memorandum as £392,000
Costs are now £1,390,000

Misconduct procedures for former officers (cost on PS)

Currently, disciplinary proceedings for gross misconduct are halted if the constable resigns or retires but in future these will continue to a conclusion. This will mean that there are likely to be longer hearings and more proceedings. PS have set out detail on the required increase in headcount, the grades involved and accounted for the most recent pay settlement.

The Professional Standards Department will need to increase by 4 FTE at a cost of approximately £230,000 for servicing additional investigations and hearings on

account of other changes in the Bill. PS also now assess that continuing hearings against officers who would currently resign or retire will require an uplift of 10-12 officers which would be in the region of £540,000 - £720,000.

A third element is for cases against former officers which come to light after they have retired or resigned. PS assess this as £300,000 in ongoing costs.

Costs were assessed in the Financial Memorandum as £211,000

Costs are now £1,250,095 (upper estimate)

In total, the new information in comparison to the original FM is as follows:

	Financial Memorandum	Revised PS	Revised SCTS	Increase	Overall total revised costs
One off costs					
Courts	£0		£3,000	£3,000	
Other bodies	£801,134			£0	
Training	0	£1,552,000		£1,552,000	
Total One-off	£801,134	£1,552,000	£3,000	£1,555,000	£2,356,134
Recurring Costs					
Legal expenses for individual.	£392,000	£1,390,000		£998,000	
Staff costs for PS	£211,000	£1,250,095		£1,039,095	
Training		£793,500		£793,500	
Courts	£10,340			£0	
Total Recurring	£613,340	£3,433,595	£0	£2,830,595	£3,443,935
Total	£1,414,474	£4,985,595	£3,000	£4,385,595	
Overall total revised costs					£5,800,069

Finally, in response to your comments about “framework” bills, whilst noting there is no definition of a framework bill, I do not consider the Police Ethics etc Bill to be a framework bill. The Bill is an amending one working within the current legislative landscape, which includes the Police, Public Order and Criminal Justice (Scotland) Act 2006 and the Police and Fire Reform (Scotland) Act 2012 with regulations made under both. The Bill is amending these pieces of legislation.

Where some areas of the law, such as police misconduct, are already dealt with under secondary legislation, the Bill ensures that the Scottish Ministers have the tools to amend that secondary legislation. For other areas, such as the Code of Ethics, Duty of Candour, SPA liability for Chief constable, and new powers of the

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PIRC and PIRC governance, the Bill itself makes the majority of the substantive changes that are required to primary legislation, with some minor, technical or process driven aspects left to secondary legislation, such as adding to lists of consultees for the Code of Ethics.

I hope this information is of use.

Yours sincerely,

ANGELA CONSTANCE

Letter from the Convener of the Criminal Justice Committee to the Cabinet Secretary for Justice and Home Affairs of 25 April 2024

Dear Cabinet Secretary

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

Thank you for providing the Criminal Justice Committee with a copy of your letter to the Convener of the Finance and Public Administration Committee, Kenneth Gibson MSP, regarding the financial memorandum for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

In your letter you helpfully set out the additional estimated costs for Police Scotland and the Scottish Courts and Tribunal Service (SCTS) to implement the provisions in the Bill.

For Police Scotland you have provided details of an estimated one-off cost of £1,552,000 and estimated recurring costs of £3,433,595, with an explanation of the reasons for these revised figures.

For the SCTS you indicated that there is a revised one-off cost of £3,000. It would be helpful to understand the reason for this revised figure.

Could you please confirm whether there are any additional costs for other relevant policing bodies, such as the Scottish Police Authority, the Police Investigation and Review Commissioner and the Crown Office and Procurator Fiscal Service.

It would be helpful for the Committee members and for those invited to provide evidence on the Bill's provisions, if all of the financial information was provided within one document.

I would be grateful for your consideration of this request.

I look forward to your response.

Best wishes

Audrey Nicoll MSP
Convener
Criminal Justice Committee

Letter from the Cabinet Secretary for Justice and Home Affairs to the Convener of the Criminal Justice Committee of 1 May 2024

Dear Convener

Thank you for your letter of 25 April. I am writing to set out the information requested.

In regard to the Scottish Courts and Tribunal Service (SCTS) revised cost of £3,000, the Scottish Government accepts the SCTS justification set out in their evidence to the Finance and Public Administration Committee (FPAC) which confirms the Financial Memorandum as being accurate apart from an initial £3,000 set up costs. SCTS states:

“Based on the current provisions of the Bill, the SCTS will incur set up costs, including making relevant I.T. changes to support these new appeals. It is estimated these costs will be in the region of £3,000.”

There are no new additional costs for the other relevant bodies. However, at the point of revising the Financial Memorandum at stage 2 the Scottish Government will have regard to any pay settlements since the FM's original publication and ensure any increased staffing costs are reflected.

The table provided as Annex A to this letter, originally included in the letter to Finance and Public Administration Committee (FPAC) on 22 April, shows the revisions in one document. As noted in the table, the costs to 'other bodies' is unchanged and estimated at £801,134. The overall cost of the Bill is estimated at £5,800,069 (as opposed to £1,414,474 in the FM), of which £2,356,134 is one-off costs and £3,443,935 is recurring.

I hope this information is of use.

Yours sincerely,

ANGELA CONSTANCE

Annex A: Table provided to the FPAC

In total, the new information in comparison to the original FM is as follows:

	Financial Memorandum	Revised PS	Revised SCTS	Increase	Overall total revised costs
One off costs					
Courts	£0		£3,000	£3,000	
Other bodies	£801,134			£0	
Training	£0	£1,552,000		£1,552,000	
Total One-off	£801,134	£1,552,000	£3,000	£1,555,000	£2,356,134
Recurring Costs					
Legal expenses for individual.	£392,000	£1,390,000		£998,000	
Staff costs for PS	£211,000	£1,250,095		£1,039,095	
Training		£793,500		£793,500	
Courts	£10,340			£0	
Total Recurring	£613,340	£3,433,595	£0	£2,830,595	£3,443,935
Total	£1,414,474	£4,985,595	£3,000	£4,385,595	
Overall total revised costs					£5,800,069