



The Scottish Parliament
Pàrlamaid na h-Alba

Finance and Public Administration Committee

Jamie Hepburn MSP
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Scottish Government

By email

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Dear Jamie

Congratulations on your new role in the Scottish Government. The Finance and Public Administration Committee looks forward to working with you.

As you may be aware, the former Minister for Parliamentary Business wrote to the Committee on 18 April 2024¹, in response to our ongoing concerns regarding the quality and consistency of Financial Memorandums (FMs) provided by the Scottish Government. In that letter, the former Minister sought clarification on the Committee's concerns in order to ensure that the Scottish Government guidance appropriately reflects the Committee's views. We welcome this opportunity, and our letter therefore restates areas of procedure and guidance that we consider should be more consistently applied and sets out our expectations around the required standards for FMs and regarding updates and ongoing monitoring of costs.

Standards for Financial Memorandums

As you will be aware, our scrutiny has repeatedly identified issues with the quality of information presented in FMs, as well as a general lack of consistency in how that information is presented. We have highlighted our concerns in successive reports and letters on FMs to both the lead Committees and to the Scottish Government.

¹ [Letter from the Minister for Parliamentary Business to the Convener of 18 April 2024](#)

We welcome the inclusion, in the Minister's letter, of relevant excerpts from the Scottish Government's Bill Handbook and note that detailed guidance on the preparation and clearance of FMs is included in the Scottish Public Finance Manual (SPFM) - Guidance Note 2009/01².

The Committee has carefully reviewed our scrutiny of recent FMs against the guidance on FMs included in the SPFM, and has found that most of our concerns would not have arisen if this guidance had been consistently applied by teams developing FMs. For your information, concerns previously raised by the Committee in relation to the quality of information in FMs include—

- lack of costings for all provisions in a Bill;
- the identification of potential implications of proposals, without actual estimates of costs;
- the provision of unrealistic costs and savings;
- lack of sufficient consultation with stakeholders around accuracy of costings;
- the use of lower projections in costings, despite both lower and higher projections being available;
- costings not taking into account the impact of inflation.

We note that all the above requirements are covered by guidance in the SPFM and the associated *Questionnaire for completion by Bill teams in the preparation of financial memoranda* (available as an annexe to guidance in the SPFM). We therefore urge the Scottish Government to put in place enhanced training and development for Bill Teams to improve the quality and consistency of presentation of future FMs. This learning should include promoting the importance of applying each of the steps in the SPFM guidance when preparing FMs.

As well as setting out how the Scottish Government intends to implement these measures, we seek details of how it will monitor the outcome of this work to determine any improvement in the quality and consistency of presentation of FMs.

The Committee has also made a number of specific recommendations relating to the presentation of FMs in its correspondence and reports on individual FMs, which we consider would improve the overall quality of FMs and therefore aid effective financial scrutiny. These include asking that—

- costs and savings are set out clearly for all provisions in the Bill, with margins of uncertainty reflected in minimum and maximum estimates. Inconsistencies in presentation, such as using ad-hoc thresholds for “material” and “immaterial” costs, as in the case of the FM for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill³, or rounding up figures for some measures while using precise costs for other measures in the same FM, hamper transparency and the Committee's scrutiny. **The Committee's strong preference**

² [FGN2009/01 financial memoranda that accompany Scottish Government bills - Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/financial-memoranda/financial-memoranda-that-accompany-scottish-government-bills-2009-01/)

³ [Letter from the Convener to the Cabinet Secretary for Justice and Home Affairs of 16 April 2024 \(parliament.scot\)](https://www.parliament.scot/Document/2024-04-16-Letter-from-the-Convener-to-the-Cabinet-Secretary-for-Justice-and-Home-Affairs)

therefore is that margins of uncertainty are provided in all cases, with minimum and maximum estimates, unless precise figures are available.

- the same measure of inflation is used across Government. During scrutiny of the FM for the National Care Service (Scotland) Bill⁴, the Committee noted the use of CPI as a measure of inflation, rather than the customary GDP deflator, which is usually used by Government in its figures, including the Scottish Budget. **The Committee's expectation is that the GDP deflator measure of inflation is applied across Government to enable comparability of costs across all areas of the Scottish Budget.**
- **where possible, financial information is set out clearly by specific provisions in the Bill (rather than by policy intention), with summary tables providing an overall picture of all the financial implications of the Bill, as recommended in the SPFM guidance.** Approaches on this currently differ from FM to FM.
- **repetition of text across Bill documents is to be avoided.** While FMs in Session 6 are considerably lengthier compared to those in the first session of Parliament, recent documents include significant repetition of information already available in other accompanying documents, such as the Policy Memorandums. This repetition of information is unnecessary and does not improve the quality of the FM, nor support improved scrutiny.

Updates and revisions to Financial Memorandums

As you may be aware, the lack of accurate and complete costings in some FMs scrutinised by the Committee this session prompted us to request updated documents at Stage 1 for Bills including the National Care Service (Scotland) Bill and the Police (Ethics, Conduct and Scrutiny) Bill, amongst others. This appears to have led to misunderstanding and confusion in the Scottish Government regarding the requirements under Standing Orders for revised or supplementary FMs, where a Bill has been amended at Stage 2 so as to substantially alter its cost implications, and the updated information requested by the Committee at Stage 1.

Under rule 9.3.2 of Standing Orders, supplementary and revised financial memorandums should be provided after Stage 2, where a Bill has been amended 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. However, as with any parliamentary committee, it remains open to us to request additional information in writing, including updated costings at Stage 1 where we have limited confidence in the information presented in the original FM or where costs are deemed to have evolved significantly since the introduction of the Bill. We again highlight guidance in the SPFM, which states that “substantive changes to information in the original Financial Memoranda identified during Stage 1 should be addressed through correspondence with the Finance Committee”. **We therefore repeat our request above that enhanced training and development for Bill Teams is put in place, including promoting the importance of applying the requirements in the SPFM on FMs.**

⁴ [Letter from the Convener to the Minister for Social Care, Mental Wellbeing and Sport of 8 February 2024 \(parliament.scot\)](https://www.parliament.scot/2024/02/08/letter-from-the-convener-to-the-minister-for-social-care-mental-wellbeing-and-sport)

We further seek the Scottish Government’s commitment to proactively write to the Committee with any significantly revised figures for FMs during Stage 1 as soon as they are aware of them (including any margins of uncertainty) and request that, in addition, the SPFM is revised to give more prominence to this commitment.

While these written updates at Stage 1 do not constitute revised or supplementary FMs, we may ask that they are provided in a similar format to the original FM, to ensure comparability and to aid transparency. We stress, however, that FMs should be as accurate as possible at the point of introduction, and updates should not be required routinely.

Monitoring of implementation costs for framework legislation

We have previously highlighted the difficulties for scrutiny of FMs arising from the Scottish Government’s use of co-design to inform a Bill’s provisions beyond Stage 1 of the legislative process. We are clear that co-design and engaging with stakeholders on policy proposals supports better outcomes and improves decision making. However, where co-design does not occur in advance of legislation being introduced, financial scrutiny becomes incredibly challenging, if not impossible. It is our view that, to enable effective scrutiny, wherever possible, stakeholder engagement and co-design processes should take place before Stage 1, rather than following on from the legislative process.

We note your predecessor’s comments regarding the Scottish Government’s position regarding framework legislation and the Permanent Secretary’s offer, during oral evidence to our Committee, of “putting something in writing around the definition so that we can be clear what is and what is not in that bracket”⁵. We believe that a written definition, as well as guidance on the development of framework bills, will be useful for future scrutiny and welcome the ongoing work of the Delegated Powers and Law Reform Committee in this area.

The Committee has also noted the lack of detailed costings in framework bills, and we would again highlight the guidance in the Scottish Government’s own SPFM, which states that “estimating costs (and benefits) can be difficult but rarely if ever impossible” and “costings should not be omitted because final decisions have still to be made”. The Manual further clarifies that—

“Where a Bill proposes powers dependent on secondary legislation (or further primary legislation), it may not be possible to be precise. In these cases, the Memorandum should say so. However, this should be supported by an outline of the SG’s current intentions, the financial implications of these intentions, and the effect of varying the major assumptions.”

In recent years, the Committee has observed that FMs have failed to provide full costings on the basis that decisions are yet to be made. As evidenced above, such justification is at odds with the Scottish Government’s own guidance for the development of FMs and its *Questionnaire for completion by Bill teams in the*

⁵ [Official Report \(parliament.scot\)](https://www.parliament.scot/Official-Report)

preparation of financial memoranda, which starts by setting out the following questions:

- Have all the provisions in the Bill that might give rise to costs or benefits, however marginal, been identified? The Finance Committee will expect all relevant matters to be addressed.
- Have all potential costs or benefits, except those of a genuinely marginal nature, been quantified - including those likely to arise from secondary legislation?

We reiterate our request that this comprehensive guidance and questionnaire are both brought to the attention of Bill Teams and used consistently in the development of FMs by the Scottish Government. The Committee will continue to monitor the quality and detail provided in future FMs, including in relation to framework bills.

In relation to some framework Bills, the Committee has previously asked the Scottish Government to provide regular updates on expenditure, for example, in relation to the National Care Service (Scotland) Bill and the Circular Economy (Scotland) Bill, to ensure transparency and allow the Committee to monitor costs. Our post-legislative scrutiny of the Financial Memorandum for the Children and Young People (Scotland) Bill⁶ found that “monitoring of expenditure continues to pose challenges to the Scottish Government and local authorities”⁶. **To ensure consistency and enable regular scrutiny, the Committee therefore suggests that such updates on these Bill costings are presented to the Committee in a co-ordinated way annually, alongside the Scottish Government’s Medium-Term Financial Strategy.**

We trust that our recommendations set out in this letter will be helpful to Scottish Government officials in their developing of FMs and provision of regular updates where required. We look forward to receiving your views regarding these suggestions which we hope will support improved scrutiny of future FMs.

Yours sincerely

**Kenneth Gibson MSP
Convener
Finance and Public Administration Committee**

⁶ [postlegscrutinycypbill_deputyconvenertodfm_4oct22.pdf \(parliament.scot\)](#)