

# Finance and Public Administration Committee

12<sup>th</sup> Meeting 2024 (Session 6), Tuesday 26  
March 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 on Tuesday 26 March from the following Scottish Government officials—
  - Graham Thomson, Head of Legislation and Divisional Development, and
  - Steven Bunch, Bill Team Leader, Scottish Government.
2. The purpose of this session is to review the potential costs associated with the measures introduced by the Bill, as set out in the FM, and to explore the issues raised by stakeholders in written evidence to the Committee.

### Background

3. 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.
4. As explained in the [Policy Memorandum](#), the Bill is intended to further the implementation of recommendations of Dame Elish Angiolini's 2018 [Independent Review of Complaints Handling, Investigations and Misconduct in Relation to Policing](#). As explained in the [Policy Memorandum](#), the Bill is intended to further the implementation of recommendations of Dame Elish Angiolini's 2018 [Independent Review of Complaints Handling, Investigations and Misconduct in Relation to Policing](#). The Policy Memorandum states that the focus of the review “was to look at how the structures and processes for complaints handling, investigations and misconduct issues were working” and to seek to “bring greater fairness, transparency, accountability and proportionality to policing, while protecting the human rights of everyone involved”.

5. The Policy Memorandum explains that the Bill covers four broad policy areas—
  1. Ethics of police
  2. Police conduct
  3. Functions of the Police Investigations and Review Commissioner
  4. Governance of the Police Investigations and Review Commissioner
6. The Scottish Parliament Information Centre has published a briefing on the Bill, which is available on the [Scottish Parliament website](#).
7. The Lead Committee for scrutiny of the Bill is the Criminal Justice Committee. That Committee's call for views on the general principles of the Bill ran from 26 September 2023 until 8 December 2023 and received 36 responses, which are available to view on [Citizen Space](#). The Parliament has agreed that consideration of the Bill at Stage 1 should be completed by 21 June 2024.
8. The Presiding Officer has ruled that the Bill requires a financial resolution.
9. The Finance and Public Administration Committee held a call for views on the estimated financial implications of the Bill as set out in the FM from 4 July 2023 until 1 November 2023. The Committee received 4 submissions to its call for views, which are available to view on [Citizen Space](#).
10. Annex A provides detail regarding the information to be included in FMs, as per the Scottish Parliament's Standing Orders.

## Financial Memorandum

10. The [FM for the Bill](#) provides estimates of potential costs and savings arising from the Bill as they apply to the Scottish Administration, Local Authorities, and other bodies, individuals and businesses, detailed on pages 9-23.
11. The FM states that information on costings and financial implications was requested and gathered via desk-based research and direct engagement with a range of policing and regulatory bodies.<sup>1</sup> Paragraph 26 of the FM details the Scottish Government's financial information on policing (including funding to PIRC and the SPA) that was also reviewed and analysed to inform the contents of the Bill.
12. Table 1 in the FM outlines the estimated costs for the Bill's provisions, estimating the Bill's total annual ongoing costs to be between £520,424 and £1,414,474.

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<sup>1</sup> The FM states that the engagement involved the following bodies: Police Scotland (PS), the Scottish Police Authority (SPA), the Police Investigations and Review Commissioner (PIRC), His Majesty's Inspectorate of Constabulary in Scotland (HMICS), the Home Office, the College of Policing, the London Mayors Office for Policing and Crime, and the Scottish Police Federation.

The FM distinguishes between and comments on “material” and “immaterial” costs (more information on which is set out below). “Immaterial” costs are included in the upper estimate of the Bill’s total costs.

13. As the Bill will enable the PIRC to make recommendations to the Chief Constable, the FM states that additional implementation costs may be incurred should the Chief Constable enact recommendations made, and that “this indirect cost cannot be quantified”.

## Secondary legislation

14. The FM states that “legislation is only part of the process for improvement. It will provide the framework and help focus attention on the cultural and behavioural changes that are necessary at all levels of policing. Subsequent secondary legislation and written guidance will help to support those changes.”
15. It notes that “work can only begin to amend existing regulations when the provisions are enacted which will allow a holistic consideration of the changes required. There may be costs associated with implementing these regulations, which will be considered at the appropriate time. It is expected that all secondary legislation will be subject to the affirmative procedure enabling parliamentary scrutiny.”

## Consistency of presentation in Financial Memorandums

16. The FM states that “many of the provisions in the Bill are enabling provisions that provide a framework for powers to be taken forward in regulations and guidance” and that, as such, “the financial impacts of the Bill are likely to be felt indirectly and as a consequence of the way that the regulations are taken forward.”
17. It also 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.”
18. The FM states that the £10,000 benchmark for materiality “takes into account the relative cost of changes in proportion to the overall budget of the affected organisations ... and the difficulty in being precise when dealing with smaller estimates.” This approach to presenting costs as material and immaterial and the use of the £10,000 figure as a benchmark for materiality does not appear to be the usual approach taken for Scottish Government FMs.
19. The Committee has previously raised concerns regarding the consistency of presentation in FMs. In its letter to the Minister for Social Care, Mental Wellbeing and Sport of 8 February 2024 regarding the FM for the National Care Service (Scotland) Bill, the Committee stated that “it is essential for transparency and

scrutiny that FMs provide “best estimates”, as required under the Parliament’s Standing Orders, and we therefore ask that precise figures are consistently presented in future FMs.”

## Costs to the Scottish Administration

20. The FM states that the Bill has “insignificant financial implications for the Scottish Administration.” As noted in Table 1, the total cost to the Scottish Administration is expected to be between £0 and £10,340, including potential “immaterial” costs.

## Costs to Local Authorities

21. The FM states that there are no costs to Local Authorities.

22. However, in its submission to the Committee’s call for views on the FM, South Lanarkshire Council suggested that—

“any additional financial burden on Police Scotland would have indirect financial implications for the council and other public sector partners, should revenue budget decisions impact on operational policing in South Lanarkshire. Consideration should therefore be given to ensuring impact to operational police services are minimised, and any changes resulting from the Bill be further consulted upon with all partner agencies once details are known.”

## Costs to other bodies, individuals and businesses

23. The FM states that the majority of costs will be incurred by policing partners, noting that the Bill is expected to lead to an overall increase in costs for policing bodies, especially PIRC and PS. As some responsibilities will transfer from the SPA to the PIRC, the FM notes that resulting savings may partly offset the overall cost increases. It also notes that costs resulting from legal fees may be incurred by staff associations and former police officers due to an increased number of hearings occurring, and proceedings continuing until they reach an outcome.

24. It states that: “the Scottish Government understand the resource implications for some policing partners in implementing these provisions and will continue to work with them in considering these costs.”

25. Table 2 outlines the estimated “material costs” to organisations that are likely to arise as a result of the Bill’s provisions. Total ongoing annual costs to organisations and individuals are estimated to be between £520,474 and £1,374,474, and one-off costs are estimated to be £15,000.

26. In its submission to the Committee's call for views on the FM, Police Scotland (PS) stated that the figures relating to PS provided in the FM are "significantly underestimated", and that "Police Scotland calculate the projected financial impact of the proposed bill to cost in the region of £5m, before recurring and additional unknown costs are realised." A summary of PS's estimated potential additional costs not reflected in the FM is included at Appendix A of its submission.
27. PS go on to state that "it is unclear from the Financial Memorandum whether margins have been considered to future-proof for the year on year rise to the cost of living." The submission also states that—
- "Police Scotland 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."
28. No "immaterial" costs are included in the cost breakdown provided at Table 2 of the FM. Paragraph 38 of the FM states that "with regard to costs for other bodies, the Scottish Government anticipate that there are other provisions which individually can be categorised as:
- a. Immaterial (i.e. under £10,000);
  - b. Immaterial and transfer from one body to another (i.e. from SPA to PIRC);
  - c. Immaterial and absorbed (for example in changes to Police Scotland training for duties of candour);
  - d. Have no cost (as the current situation does not change, but is clarified in legislation); or,
  - e. There is the possibility that some provisions could lead to a small saving as some cases are excluded from further investigation due to their vexatious nature."
29. It explains that, should the cumulative effect of these costs be incurred (i.e. each cost £10,000), and not transfer to another body or be a saving, then total costs for other bodies would increase by £60,000. Table 3 provides an overview of immaterial costs, and further explanation is provided on pages 13-23 of the FM.
30. Table 4 of the FM provides a summary of both material and immaterial costs arising from each of the four parts of the Bill.

## Part 1 – Ethics of the Police

31. The FM states that any costs incurred in the updating and delivery of training materials will be absorbed as part of a wider ongoing police training programme and are therefore immaterial.

32. It also states that “For the two provisions in this part of the Bill, there are two costs that are likely to be below £10,000 and absorbed by PS. Assuming the immaterial costs are £10,000 each, then this would cost £20,000.”
33. In its submission to the Committee’s call for views on the FM, PS stated that the establishment of statutory Code of Ethics with an associated requirement to consult and publish every 5 years as provided for by Part 1 of the Bill “is expected to incur additional costs substantially over £10,000. Development, consultation, training and publishing, internally and externally, will assume the largest proportion of costs.”

## Part 2 – Police conduct

34. The FM states that Part 2 of the Bill is expected to incur ongoing material costs of between £877,340 and £985,340, arising from—
1. “PS continuing gross misconduct proceedings are in the range of £103,000 if the officer retires after the investigation but before the hearing and, £211,000 after.
  2. Hearings with the changes proposed for secondary legislation: SPA (up to £18,000), PIRC (up to £177,000) and staff associations (up to £177,000) totalling up to £372,000 per year.
  3. Former officers seeking legal representation (who have retired with active proceedings against them) assessed to be 14 x £28,000 totalling £392,000.
  4. PAT [Police Appeals Tribunal] contingency for two cases per year: £10,340.”
35. In its submission to the Committee’s call for views, PS estimates that costs incurred as a result of the Bill’s provisions relating to police conduct are likely to be much higher than estimated by the FM. PS states that “given the importance of the legislation being proposed and the impact on the careers and private lives of officers and staff, it is essential that robust and auditable training is provided to ensure understanding and to support implementation of the provisions”
36. PS further states that “based on the cost of training previously introduced to support new legislation, it is estimated that these costs will be in the region of £1.1m” and “an additional cost in the region of £417k will be incurred to deliver the same training to all staff members which is part of a resourcing implication for any training provision.”
37. PS’s submission also states that, in addition to the costs outlined in the FM, PS would also be required to uplift resource by an additional:
- Police Inspector (£70,694)
  - Two Police Sergeants (totalling £117,280), and

- Administration Assistant (£42,121).

38. The submission goes on to state that “the figure of £392,000 (£28,000 x 14 officers) is considered to be vastly underestimated”, arguing that £1.39m is a more accurate figure for costs associated with former officers seeking legal representation.
39. The Scottish Police Federation (SPF) submission echoes the concerns raised by PS, stating that “the estimated cost attributed to training is woefully inadequate” and that costs associated with former officers seeking legal representation are likely to be approximately £1m.
40. The SPF goes on to state that—
- “the financial burden this bill proposes to place directly on individuals is unprecedented and entirely unfair. This will see a large number of officers decline to attend such hearings or offer representation due to a lack of funding. This does not serve anyone and will do nothing to promote public confidence in policing.”

### Part 3 – Functions of the Police Investigations and Review Commissioner (PIRC)

41. The FM states that the Scottish Government expects the following “material” costs to be incurred by the PIRC—
1. £15,000 initial IT set up costs to enable the PIRC to have direct access to PS’s complaints database to audit and review files necessary to their function, and £10,000 ongoing licence costs for the IT system.
  2. £376,384 ongoing costs to fund additional staffing required for the PIRC to execute the additional powers outlined in the Bill.
42. In its response to the Committee’s call for views, the SPF notes the additional costs needed to fund additional staffing required by the PIRC, and states that—
- “It is disappointing that there is no inclusion of additional funding here for SPA/PSOS or other organisations to allow them to effectively investigate and represent those who will face misconduct procedures as a result of this bill.”
43. PS’s submission states that, should there be provision for the PIRC to take on additional investigations, such as those concerning off-duty matters, “there will be a resource and financial implication for Police Scotland to support those investigations by perhaps providing specialist resources, points of contact to facilitate interviews and associated abstraction costs from their routine duties.”

## Part 4 – Governance of the PIRC

44. The FM notes that Part 4 of the Bill intends to strengthen the governance structure of the PIRC. It estimates that, based on the assumption that the Advisory Board to the Commissioner maintains its current number of members and sits quarterly, the PIRC will incur ongoing Statutory Board costs of £2,750 as a result of the provisions outlined in Part 4 of the Bill. The FM explains that, though this cost is “below the £10,000 threshold for materiality”, “it has been included as costed as it is a known quantity.”
45. The submissions received to the Committee’s call for views did not make any comment on the costs relating to Part 4 of the Bill.

## Next steps

46. The Committee will be invited to consider any next steps at a future meeting.

Committee Clerking Team  
March 2024



## Information to be included in FMs

1. [Rule 9.3 of the Scottish Parliament's Standing Orders](#) states in relation to Financial Memorandums that: “2.A Bill must on introduction be accompanied by 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 margins of uncertainty in such estimates. The Financial Memorandum must also include best estimates of the timescales over which such costs, savings, and changes to revenues would be expected to arise. The Financial Memorandum must distinguish separately such costs, savings, and changes to revenues that would fall upon—
  - a. the Scottish Administration;
  - b. local authorities; and
  - c. other bodies, individuals and businesses”
2. The accompanying [Guidance on Public Bills](#) notes that: “the Financial Memorandum should explain how these costs, savings, and changes to revenues arise, and what the implications are for the Scottish Consolidated Fund. For example, provision for a new or modified tax raising power could, assuming the power is used, significantly increase or reduce the amount of revenue paid into the Scottish Consolidated Fund. The discontinuation of a service or dissolution of an organisation could present potential savings to budgets and the Financial Memorandum should set out best estimates for these savings.”