

Finance and Public Administration Committee
23rd Meeting 2024 (Session 6)
Tuesday 25 June 2024

Disability Commissioner (Scotland) Bill – Financial Memorandum

Purpose

1. The Committee is invited to take evidence in relation to the Financial Memorandum (FM) for the Disability Commissioner (Scotland) Bill from the Member in charge of the Bill, Jeremy Balfour MSP, and the following Scottish Parliament officials:
 - Nick Hawthorne, Senior Clerk, Non-Government Bills Unit, and
 - Liz Anderson, Assistant Clerk, Non-Government Bills Unit.
2. This evidence session will provide an opportunity 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 [Disability Commissioner \(Scotland\) Bill](#) is a Member's Bill introduced by Jeremy Balfour MSP on 8 February 2024. The Bill aims to establish a Disability Commissioner for Scotland, independent from Government, to promote and safeguard the rights of disabled people.
4. The Bill's intention, as stated in the [Policy Memorandum](#), is that the Commissioner will advocate for disabled people at a national level, review law, policy and practice relating to the rights of disabled people, as well as promote, commission, undertake and publish research on matters relating to the rights of disabled people. The Commissioner will also have the power to undertake investigations to encourage the consideration of the rights, views, and interests of disabled people in the decision-making and actions of service providers.
5. The Policy Memorandum further explains that the Member's intention is for the Commissioner to be funded by and accountable to the Scottish Parliamentary Corporate Body (SPCB) and appointed by His Majesty the King on nomination of the Scottish Parliament, for a period of up to eight years, with the length of the appointment to be determined by the SPCB.
6. A SPICe briefing on the Bill has been published and is available on the Parliament's [website](#).

7. The Equalities, Human Rights and Civil Justice (EHRCJ) Committee has been designated as lead Committee for scrutiny of the Bill. The EHRCJ ran a call for views on the general principles of the Bill, which received 110 [responses](#), and took oral evidence from stakeholders at meetings on [4, 11 and 18 June](#). It is also planning to hold private engagement sessions throughout the autumn to hear from people with lived experience.
8. In response to the EHRCJ's call for views, the Scottish Government provided a [Memorandum](#), which states that "the broad intention of the Bill aligns with the Scottish Government's missions, despite the approach itself raising a number of concerns" and that the Government "will therefore be holding a neutral position on the Bill". The Memorandum goes on to list the following Scottish Government concerns about "the feasibility and desirability of a commissioner role as the vehicle to advance disability equality":
 - the potential for the Commissioner to duplicate functions already undertaken by existing bodies;
 - the complex landscape which this additional Commissioner would be added into;
 - the limitations of the approach proposed in the Bill in terms of value for money and efficiency.
9. As required by Standing Orders (Rule 9.6, 3A), the lead Committee is required to publish its report on the Bill no later than the fifth sitting day before the Bill's Stage 1 debate on the Bill, taking into account the views submitted by any other Committee, including those provided by this Committee on the Financial Memorandum. The Parliament is yet to agree a Stage 1 deadline for the Bill.
10. The Presiding Officer has ruled that the Bill requires a financial resolution.

Financial Memorandum

11. [Rule 9.3 of 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.

12. The [Financial Memorandum](#) for the Bill provides estimates of potential costs arising from the creation of a new Disability Commissioner, drawing on the estimated figures for recently established commissioners, recent legislation relating to the establishment of commissioners, annual accounts of existing commissioners and consultation with SPCB officials. The FM notes that, in drafting the document, “reference was also made to the Scottish Parliament Finance Committee Report on Accountability and Governance¹” from Session 2 and “in line with the principles set out in the report, the member’s view is that, where possible, the Commissioner should share services and accommodation with other public bodies and avoid duplication of work”.
13. The FM states that, although the Disability Commissioner will be an independent officeholder, in exercising their statutory functions, they will be accountable to the SPCB, and the creation of the Commissioner will result in additional costs on the Scottish Parliament budget. A summary of the estimated costs to the SPCB is provided below, broken down into set up and ongoing costs:

Type of cost	Set up costs (2025-26)	Ongoing costs (annual)
Recruitment	£8000	
Commissioner remuneration	£75,837	£130,005
Staff salaries	£40,702	£244,212
Accommodation	£95,000	£0 - £184,288
IT set up/support and website	£45,000-£70,000	£20,000 - £45,000
Payroll/HR service	£2,000 - £4,000	£0 - 4000
Travel and subsistence	n/a	£10,000
Inclusive communication and research	n/a	£35,000 - £45,000
Professional fees	n/a	£35,000
Investigations	n/a	£16,000 - £31,000
Publicity and promotion	£48,000-£85,000	£20,000 - £85,000
Administrative and other costs	n/a	£29,500
Shared services	n/a	£35,000
Estimated total	£314,539- £378,539	£574,717 - £878,005

14. As set out in the table above, the FM assumes initial costs of £95,000 for accommodation, fit out, furniture and legal fees, while noting the Member’s view that the Commissioner should share accommodation with other public bodies. Drawing on the FMs for other recently established commissioners, the FM states that the Disability Commissioner is expected to have four full time equivalent

¹ [\[ARCHIVED CONTENT\] The Scottish Parliament - Finance Committee Report \(nrscotland.gov.uk\)](#)

members of staff, including one member of administrative staff and three members of policy staff.

15. The FM further explains that there may be additional associated costs in relation to investigations carried out by the Commissioner, where the Commissioner requests that an individual gives evidence in person and may, therefore, pay travel expenses. The associated cost, the FM notes, is however difficult to quantify as it will depend on various factors including the frequency of investigations, whether in person evidence is required and the distance the person providing evidence is required to travel.
16. As stated in the FM, “the Commissioner will have powers to undertake investigations into by what means and to what extent a service provider has regard to the rights, interests and views of disabled people or a disabled person in making decisions or taking actions that affect an individual disabled person or disabled people”. Following such an investigation, the Commissioner may make recommendations for change to other bodies, including local authorities, individuals and businesses. However, the FM explains, “as the Commissioner will not have the power to enforce any such changes no new costs are expected to be placed on bodies, individuals or businesses as a result of this.” The FM therefore assumes no costs on local authorities or other bodies, individuals and businesses.
17. Paragraph 18 of the Bill requires the Commissioner to prepare a budget before the start of each financial year and seek the approval of the SPCB by such a date as the SPCB determines. The Commissioner may also seek to revise the budget during the year by submitting revised proposals to the SPCB for approval. The [Explanatory Notes](#) for the Bill state that “when preparing a budget or a revised budget, the Commissioner is required to ensure that resources will be used economically, efficiently and effectively (sub-paragraph 3) and must, under sub-paragraph (4), certify this in any budget or revised budget proposal”.
18. As usual, the FPA Committee ran a call for views on the FM, which closed on 17 May 2024 and included the following standard questions that this Committee asks on all Financial Memorandums:
 - Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
 - If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?
 - Did you have sufficient time to contribute to the consultation exercise?
 - If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
 - Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

- If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
- Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

19. The call for views received three [responses](#), from:

- Disability Equality Scotland,
- East Ayrshire Health and Social Care Partnership (HSCP), and
- Scottish Courts and Tribunals Service (SCTS)

20. The [SCTS submission](#) highlights costs to the SCTS arising from Schedule 2, paragraphs 5 and 6, which provide for the creation of a new offence and penalty. The submission states that “the exact impact will depend on the number of prosecutions that may arise and it may be considered that such prosecutions will be low in number. However, the new offence provisions will potentially impact on the SCTS in terms of:

- court time and relative programming; and
- associated staff and accommodation resources.”

21. These costs have not been addressed in the FM.

22. [East Ayrshire HSCP](#) note, in their submission to the Committee, that despite Councils not having the obligation to act on the Disability Commissioner's recommendations, costs could be incurred by local authorities over the course of an investigation. The FM highlights these as being minimal, however, the HSCP states that “this assumption may be overly optimistic as it will clearly depend on the depth of the investigation undertaken.”

23. [Disability Equality Scotland](#) highlight that the Bill “could have an indirect implication of reduced funding” for the organisation, as funds may be diverted towards the Disability Commissioner.

24. The Scottish Government's [Memorandum](#) states that the funds required for the creation of the Commissioner—

“could be better directed towards more strategic approaches to achieving the Bill's aims. [...] We are soon to publish the first phase of a Disability Equality Strategy aimed at tackling the systemic barriers that affect the daily lives of disabled people and impact on disability poverty. Setting up a Disability Commissioner would divert resources from this valuable work without the evidence base to suggest it would be an effective way of achieving change.”

25. The Scottish Government Memorandum also highlights potential underestimates in relation to the cost of investigations, which the FM estimates to range from £16,000 to £31,000 per annum—

“Given the fairly extensive investigatory powers the Bill enables the Commissioner to undertake into service providers, both in relation to disabled people in general and particular disabled individuals, this appears to be a very limited budget.”

26. Issues related to the FM have been raised during evidence sessions with the lead Committee on [4](#), [11](#) and 18 June. Witnesses, including the Children and Young People’s Commissioner, Glasgow Disability Alliance, Inclusion Scotland, the Scottish Commission for People with Learning Disabilities, National Autistic Society Scotland and Marie Curie Scotland commented on potential underestimates in the FM, particularly in relation to staffing and participation costs. Witnesses highlighted that the FM does not include provision for participation, legal or investigation staff and that the costs associated with engagement and participation are conservative. Concerns have been raised that the allocated resource may be insufficient to ensure accessibility and meaningful participation. Nevertheless, witnesses argued that, should the Commissioner be adequately funded, this could constitute an investment, the economic benefit of which may outweigh the cost of implementing the Bill.

Inquiry into Scotland’s Commissioner Landscape: A Strategic Approach

27. The FPA Committee recently concluded evidence-gathering for its inquiry into [Scotland’s Commissioner Landscape: A Strategic Approach](#) and is due to report its findings in September 2024. Concerns raised regarding the addition of new Commissioners to an already cluttered landscape, included the impact of additional costs at a time of significant pressure on public finances, the potential for overlap and duplication, and confusion around who individuals should approach. Witnesses also highlighted the drivers for proposals to create new Commissioners, including responding to systemic failures in public service delivery, the need to bring prominence to an issue and seeing similar Commissioners in other parts of the UK. They argued other ways of addressing these issues should be considered, including the role of Parliament in holding the Government to account. Evidence also suggested that more robust scrutiny and accountability processes are required.
28. As noted above, the FM references the Session 2 Finance Committee report. However, neither the FM nor the Policy Memorandum set out whether the criteria to be considered when proposing new Commissioners have been applied to this new Commissioner and, if so, the extent to which those criteria were met.

29. The Policy Memorandum acknowledges the potential duplication of functions between the proposed Disability Commissioner and other organisations including the Equality and Human Rights Commission, Scottish Human Rights Commission and the Mental Welfare Commission and sets out the Member's view that "memorandums of understanding could be put in place between relevant organisations in order to set out which types of work can be carried out by each organisation and setting out procedures for how potential overlaps of work should be dealt with".

Next steps

30. Following consideration of the evidence received, the Committee will consider any next steps it wishes to take in relation to the FM.

Committee Clerking Team
June 2024